



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/23412/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15th June 2015**

**Decision & Reasons Promulgated
On 6th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR SHAHID HUSSAIN
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iqbal of Counsel

For the Respondent: Mr Kandola

DECISION AND REASONS

Introduction

1. The Appellant born on 3rd March 1973 is a national of Pakistan. The Appellant was represented by Mr Iqbal of Counsel. The Respondent was represented by Mr Kandola a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for a residence card as a confirmation of a right to reside in the United Kingdom under Regulations 6 and 8(5) of the 2006 Regulations. The Respondent had refused that application on 15th May 2014 on the basis that the Respondent was not satisfied that the EEA family member was a qualified person or that the Appellant was in a durable relationship with the EEA national.
3. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Moore sitting at Taylor House on 2nd February 2015. The judge had found for reasons given that the EEA national was exercising treaty rights in the UK as a worker and that the Appellant and the EEA national were in a durable relationship within the terms of Regulation 8(5) of the 2006 Regulations. In his final heading decision at paragraph 24 the judge had stated "I allow this appeal".
4. The Respondent had made application for permission to appeal on the basis that the judge should have remitted the matter back to the Respondent to exercise their discretion under Regulation 17(4) of the 2006 Regulations. Permission to appeal was granted by First-tier Tribunal Judge Cox on 1st April 2015 on the basis that such grounds disclosed an arguable material error of law and indeed stated that the contention was not only arguable but irresistible. Directions were issued and the matter came before me in accordance with those directions to decide firstly whether an error of law had been made.

The Proceedings

5. Mr Iqbal and Mr Kandola had properly and helpfully agreed in advance that indeed an error of law had been made by the judge in allowing the appeal outright rather than allowing the appeal to the extent that it should be remitted back to the Respondent. I agree with that decision that was reached by the representatives and accordingly I found a material error of law had been made by the judge in this case such that the decision in terms of allowing the appeal outright should be set aside and remade. I now provide that decision with my reasons.

Decision and Reasons

6. I make it clear that the judge's findings of fact in relation to the EEA national exercising treaty rights in the UK as a worker and the fact there was a durable relationship existing between the Appellant and the EEA national in accordance with Regulation 8(5) are maintained and it has not been suggested that there was any error of law made by the First-tier Tribunal in reaching those conclusions.
7. The Respondent having not been satisfied in the first instance that the Appellant came within the terms of Regulation 8(5) had at no stage considered their discretion under Regulation 17(4). In those circumstances and in accordance with case law the proper approach which I adopt is to allow the appeal to the extent that it is remitted back to the

Respondent to make a lawful decision i.e. in terms of whether or not to exercise discretion under Regulation 17(4) of the 2006 Regulations.

Decision

- 8. I find a material error of law was made by the judge in this case and set aside the decision of the First-tier Tribunal. In remaking that decision I allow this appeal to the extent that it is remitted back to the Respondent to make a lawful decision by exercising their discretion one way or the other under the terms of Regulation 17(4) of the 2006 Regulations.
- 9. No anonymity direction is made.

Signed _____ Date _____

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason

Signed _____ Date _____

Deputy Upper Tribunal Judge Lever