



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

Appeal Number: IA/38469/2013

THE IMMIGRATION ACTS

Heard at Field House

On 9 April 2015

Determination

Promulgated

On 27 April 2015

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SAMUEL ADDAE

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms A Figiwala, Senior Home Office Presenting Officer

DECISION AND REASONS


1. I see no need for and do not make an order restricting reporting.
2. The appellant appeals a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him a residence card as the family member of an EEA national. The appeal was heard at Richmond on 28 November 2014 when neither the appellant nor the respondent troubled to attend. Before me the Secretary of State was represented by a Senior Presenting Officer but the appellant did not attend or give the Tribunal any explanation for his absence. Notice of hearing was sent out on 24 February 2015 to the address on the file and I checked with Ms Figiwala to make sure that she was unaware of any reason to think that the appellant had changed address.
3. It follows that I was satisfied that the appellant has notice of the hearing under the Rules and I decided to continue with the hearing in his absence.

4. The First-tier Tribunal Judge who giving permission was aware that the appellant was unrepresented and was particularly astute to look for possible problems in the determination even if they were not identified by the appellant. She drew attention to the fact that the appellant clearly and unequivocally relied on Article 8 of the European Convention on Human Rights when he made his application and the judge appears to have lost sight of this when determining the appeal.
5. I do not see how this can be anything other than an error of law and I therefore set aside the decision of the First-tier Tribunal solely to the extent that it was wrong for not dealing with the human rights claim. I now attempt remedy that in two different ways.
6. Firstly, and foremostly, this is an EEA case. There is no removal decision or imminent prospect of removal and the grounds wholly fail to show how in the absence of a removal decision the decision complained of in any way interferes with the appellant's human rights. There is no human right to have a residence card and in the event of the appellant being subject to removal directions he would then be able to raise human rights in any appeal he made. Similarly, if he is concerned about his position he can make an application for leave outside the Rules relying on human rights, and as far as I am aware, he has not done that.
7. In the alternative the First-tier Tribunal Judge, understandably given the appellant's absence, found the appellant an unsatisfactory source of evidence who had not established a genuine relationship that would have supported the finding that he sought. Building on that finding, I note that the appellant has been in the United Kingdom for (about) eight years but has not drawn attention to any close relationships other than one that is not believed that would begin to support a finding that it would be contrary to his human rights to remove him.
8. He has not been in the United Kingdom long enough to satisfy the requirements of the Rules. He does not claim to be the parent of a child who has to be considered.
9. All that I can say with any confidence is that there is sketchy evidence of some sort of private life established over an eight year period which does not begin to justify a decision outside the Rules or under the Rules for him to remain.
10. It follows therefore that, having set aside the decision of the First-tier Tribunal to the limited extent indicated above, I go on to dismiss the appeal on human rights grounds.

Notice of Decision

The First-tier Tribunal erred by not considering the claim on human rights grounds. I dismissed the appeal on human rights grounds.

Signed
Jonathan Perkins



Judge of the Upper Tribunal

Dated 23 April 2015

Jonathan Blin