IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/47061/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 June 2015	**On 10 July 2015**
Prepared 17 June 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

RAJA RIZWAN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Jafar, Counsel instructed by Lee Valley Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Pakistan, date of birth 24 May 1984, appealed against the respondent's decision, dated 5 November 2014, to make removal directions under Section 10 of the Immigration and Asylum Act 1999, a human rights based claim having been refused and a form IS151A having been served on 5 November 2014.

2. The matter came before First-tier Tribunal Judge M J H Wilson who on 25 January 2015 dismissed the appeal with reference to the Immigration Rules, particularly paragraph 2295D of the Immigration Rules HC 395, as amended, under the partnership route within Appendix FM of the Rules relating to family members and under private life considerations at paragraph 276ADE. The judge also dismissed the appeal with reference to Article 8 of the ECHR outside of the Rules on the basis that the appellant had not established that there were any special or exceptional circumstances about his family or private life in the UK to warrant a consideration under Article 8 of the ECHR.

3. The judge made no findings on whether the appellant had a family or private life in the United Kingdom but simply concluded that the public interest considerations were not outweighed by "any of the considerations in relation to the appellant's private or his family life in the United Kingdom as shown to exist." The judge also took into account the appellant's lack of immigration status in the United Kingdom. Accordingly the judge concluded that there were no good grounds for considering the appeal, with reference to Article 8 ECHR, outside of the Rules and it followed that there were no compelling circumstances not sufficiently recognised by the Rules.

4. It is clear that with the respondent's decision of 5th November 2014 there was a One-Stop Warning under Section 120 of the Nationality, Immigration and Asylum Act 2002 which required in the form of the notice of appeal to provide further reasons which were to be sent to the respondent in ten working days.

5. The notice was served on 7 November. The deadline for the notice of appeal was 21 November 2014.

6. By letter dated and sent to the Home Office on 21 November 2014 the grounds contained specific claims that the appellant was the extended family member of an EEA national, a qualified person, exercising treaty rights in the UK under the 2006 Immigration (EEA) Regulations.

7. The judge did not address that ground and accordingly there was an error of law under Section 86(2) of the Nationality, Immigration and Asylum Act 2002. There is no substantive challenge to the way the judge determined the Article 8 issues albeit Mr Jafar argued that the deficiencies disclosed in the judge's consideration of the matter at paragraphs 11 to 13 of the decision raise the Robinson obvious point that the judge had not properly considered it but rather had sought to maintain that there was a preliminary threshold to be crossed before considering the case under Article 8. However, Mr Jafar's principal submission was under the 2006Regulations

8. As a matter of historical context an earlier decision by the Secretary of State to refuse leave to remain in 2011, which did not attract a right of appeal, led to a judicial review and the decision was set aside by order of Mr Justice Blake on 15 March 2011. It is clear that permission was granted because there was a subsisting claim of seeking to remain on the basis of the appellant being the durable partner of an EEA

national under the 2006 Regulations. It is sufficient to note that over three years passed before a revised decision by the respondent was made in November 2014.

9. Prior to the respondent's decision in November 2014 the appellant's representatives, Lee Valley Solicitors, had written to the Secretary of State once again drawing to the Secretary of State the appellant's claim to remain on the basis of a durable and subsisting relationship. There was never any response from the Secretary of State to that letter.

10. Contained within the files relevant to the EEA claim that the appellant was an extended family member under Regulation 8 of the 2005 regulations, was evidence which clearly showed the EEA national sponsor was in employment at material times, the parties were sharing accommodation and sponsor was exercising treaty rights. In November 2014 Reasons for Refusal Letter the Secretary of State accepted the appellant's partner was an EEA national, Jolita Grybauskiene, currently resident in the United Kingdom and it was acknowledged "that your client has a genuine and subsisting relationship with his partner". The evidence had been advanced along the lines that they had been together for some four years.

11. The Secretary of State considered the position of the appellant's partner under the Rules, that is the Immigration Rules. Nothing was said *vis á vis* her as an EEA national exercising treaty rights. It was noted of course with reference to the requirements at the time that the appellant had applied for, and obtained a certificate of approval (marriage) on 29 March 2010 in order to marry his partner and such certificate was issued on 15 February 2011. It seems that the appellant and EEA national partner had entered into a Muslim faith marriage but, as yet, had not married in a civil ceremony in the United Kingdom.

12. Mr Nath accepted that the evidence showed a subsisting and genuine relationship for he could not go behind the concession made by the respondent in that respect. Accordingly, there really was no basis to do so with reference to the 2006 EEA Regulations.

13. In addition Mr Nath did not raise any issue on the financial information that had previously been provided to the First-tier Tribunal Judge and continued, subject to some updating even as of today to show that the sponsor was in employment.

14. Accordingly, I find as a fact the appellant was and is an extended family member, being in a durable relationship and that the EEA national sponsor is working and meets the qualified person's requirements under the 2006 Regulations.

15. In light of **Ihemedu [2011] UKUT 340** it is clear to me that under Regulation 17(4) that it is a matter for the Secretary of State whether this is appropriate in all the circumstances to issue the residence card.

16. In these circumstances the Original Tribunal decision cannot stand. In the light of the submission made the following decision is substituted.

17. Dependent upon the circumstances of the case, if the Secretary of State was to refuse the application for a residence permit the Section 84(1)(d) this would not trigger a right of appeal under Section 84(1)(d) because the appellant would not be an EEA national or a member of the family of an EEA national within the discreet meaning of Regulation 7. However, such a decision would attract almost inevitably, a claim to remain based on Article 8 of the ECHR.

NOTICE OF DECISION

The appeal is allowed to the extent that the application for a residence permit under the 2006 Regulations is returned to the Secretary of State for determination in accordance with the law.

No anonymity direction is made.

Signed Date 7 July 2015

Deputy Upper Tribunal Judge Davey