



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/08440/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2016**

**Decision Promulgated
On 4 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

JOHN OLUWOLE AWE
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is the appeal of John Oluwole Awe, a citizen of Nigeria born 27 April 1965, arising from the decision of the Secretary of State of 12 February 2015 to refuse to issue him with a residence card recognising his asserted right of residence as the spouse of an EEA national exercising Treaty Rights in the United Kingdom. The matter having been dismissed by the First-tier Tribunal, the appeal now proceeds with permission in the Upper Tribunal.
2. Given the stance properly and pragmatically taken by the parties before me, my decision can be brief.
3. The Appellant applied for a residence card based on his relationship with Cabal Carla Rodrigues, a citizen of Portugal, working at a hair salon at the time of the application. It was refused because the Secretary of State did not accept that their relationship was a durable one.

4. The First-tier Tribunal dismissed his appeal, taking the view that, notwithstanding the absence of a refusal letter giving reasons for the Secretary of State's conclusion (which was stated in a brief notice of decision, not in itself a "reasons for refusal" letter), the appeal could be justly determined, and that absent the original supporting documents that accompanied the application, and given that the missing item constituted a failure that lay at the Appellant's door, it was inevitable that the appeal should be dismissed.
5. Grounds of appeal contested the lawfulness of that approach, and permission to appeal was granted by Judge Woodcraft on 25 November 2015 noting that the course of action taken was arguably procedurally unfair.
6. Once Mr Kandola had had sight of a witness statement that was overlooked, the advocates before me agreed that the appeal had gone off on the wrong footing.

Findings and reasons

7. The parties were correct to agree that the proceedings below were marred by material procedural irregularity. Rule 24(1)(d) of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 sets out:

"24.—(1) ... when a respondent is provided with a copy of a notice of appeal, the respondent must provide the Tribunal with—
(a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;"

8. Accordingly it can be seen that the absence of a refusal letter was a matter which placed the Respondent, not the Appellant, in breach of the Rules. Furthermore, the Appellant had put a positive case as to the durability of his relationship in a short witness statement, which was overlooked by the First-tier Tribunal. It seems to me that these twin errors fatally undermine the decision appealed against.

Decision:

The making of the decision of the First-tier Tribunal contains a material error of law. Given that the Appellant has effectively been deprived of a fair hearing, it is appropriate to remit the appeal to the First-tier Tribunal to be considered afresh.

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back towards the right.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 15 January 2016