



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/35026/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 9 May 2016

Decision Promulgated  
On 20 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAFFAR ABBAS  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Mr E Waheed (counsel) instructed by Saj Law Chambers.

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal, but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Majid, promulgated on 30 October 2015 which allowed the Appellant's appeal.

## Background

3. The Appellant was born on 17 April 1989 and is a national of Pakistan.
4. On 21 August 2014 the Secretary of State refused the Appellant's application for a residence card as confirmation of a right to reside in the UK.

## The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Majid ("the Judge") allowed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and, on 12 April 2016, Judge Robertson gave permission to appeal stating inter alia

*"The grounds of application have arguable merit. Although there is no reason to identify the regulation under which the appeal has been allowed because it is clear from the reasons for refusal letter, it is arguable that the Judge gave no reasons for finding that it was unreasonable for the Respondent to require more than 3 wage slips to confirm that the EEA national was in fact exercising treaty rights. This is particularly the case because the dates of such payslips are not mentioned and there is no assessment of such evidence before the Judge concludes that the Respondent was unreasonable to require additional evidence."*

## The Hearing

7. Mr Duffy, for the respondent, told me that the Judge's decision is inadequately reasoned. He told me that the decision is 11 paragraphs long, and only 1½ paragraphs relate to the appellant. He told me that it is not clear why the Judge reached his decision, and that the Judge simply does not engage with the reasons for refusal letter. He referred me to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC). He told me that because no reasoned findings in fact had been made, the conclusion reached by the Judge is entirely unsupported. He urged me allow the appeal and to set the decision aside.

8. For the appellant, Mr Waheed told me that the Judge reached the correct decision on the evidence placed before him, so that if the decision contains an error, it is not a material error of law. He took me to the bundle of evidence which was before the First-tier and told me that, within the bundle, there was sufficient evidence to satisfy the Judge that the appellant meets the requirements of the Immigration (EEA) Regulations 2006. He urged me to dismiss the appeal and allow the decision to stand.

## Analysis

9. At [7] the Judge states that in response to questions "...the Appellant gave evidence consistent with his assertions in the application.". Nowhere else in the determination does the Judge deal with the appellant's evidence. Nowhere in the decision does the

Judge analyse the evidence and consider the evidence against the requirements of the 2006 regulations. Instead of analysing the evidence and establishing findings of fact, the Judge races to his conclusion at [1] that “*..the refusal was ill-conceived and should be set aside.*”

10. The decision does not contain any meaningful findings in fact. The decision avoids consideration of the Immigration (EEA) Regulations 2006, which is exactly what the appeal is about. The Judge has not explained why he preferred the appellant’s evidence to the respondent’s evidence, nor which parts of the appellant’s evidence he placed weight on. The appellant’s 33-page bundle is not considered by the Judge. The Judge does not consider the payslips and the bank statements produced. In short there is no meaningful analysis of the evidence which was placed before the Judge.

11. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal’s decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

12. I can only come to the conclusion that the summary nature of the decision indicates that the Judge has given inadequate reasons and that his fact-finding exercise is flawed. These are material errors of law. I must therefore set the decision aside.

13. There is, however, sufficient evidence before me to enable me to substitute a decision. I have before me the respondent’s PF1 bundle together with the appellant’s bundle which contains the items listed on the index to the bundle. The respondent was not represented before the First-tier. No application was made from an adjournment. If the respondent was happy for the case to be considered without representation before the First-tier there is no reason why I should not proceed to determine this case of new.

### My Findings of Fact

14. The appellant is a national of Pakistan, born on 17 April 1989. He entered the UK as a student on 26/12/2010. The respondent granted the appellant further leave to remain in the UK, so that he enjoyed leave to remain in the UK until 16/08/2014.

15. In July 2013 the appellant met D M (“The EEA National”) The EEA national is a citizen of the Czech Republic. Romance developed between the appellant and the EEA National, and they were married on 30/01/2014 in London. They have lived together since 22/10/2013. Their marriage endures.

16. The EEA national was working as an Office Assistant when the appellant submitted an application for a residence card in August 2014. Since then she has

changed her employment. She now works as a sales assistant at "Poundland" in Lewisham.

17. The EEA national maintains a current account with Lloyds Bank. Between August and October 2015 she maintained her account with a credit balance. In September and October, both 2015, the EEA national's wages were paid directly into her bank account.

### Conclusions

18. In the reasons for refusal letter, the respondent bemoans an apparent lack of documentary evidence. That is addressed by the evidence produced in the appellant's bundle, which includes copies of the EEA national's bank statements. The banks statements produced show payment of the EEA national's wages into her current account with Lloyd's Bank. The respondent's reasons for refusal letter calls for precisely that evidence.

19 The respondent's position has always been that there is a lack of sufficient evidence because the appellant relies on only three pay-slips. The three payslips are now supported by the reliable evidence of bank statements confirming payment of wages into the EEA national's bank account. In addition, the appellant produces the EEA National's employment contract. The weight of reliable evidence indicates that the EEA national is exercising treaty rights of movement as a worker. Sufficient evidence is now produced to discharge the burden of proving that the EEA national meets the requirements of Regulation 6 of the 2006 regulations.

### Decision

20. The decision promulgated on 30 October 2015 is tainted by a material error of law. I set it aside.

21. I substitute the following decision

22. The appeal under the Immigration (EEA) Regulations 2006 is allowed.

Signed  
Deputy Upper Tribunal Judge Doyle

Date 16 May 2016