



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04398/2016

THE IMMIGRATION ACTS

Heard at Field House
On 5 November 2018

Decision & Reasons Promulgated
On 14 November 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**OSMAN BASH TAQI
[NO ANONYMITY ORDER]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant:

In person

For the respondent:

Mr T Lindsay, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him a residence card as the family member of an EEA national exercising Treaty rights in the United Kingdom.
2. This appeal was unfortunately caught up among those to which the now-discredited *Sala* decision applied. The effect of that decision was that (until it was overturned) extended family members had no right of appeal and were obliged to challenge refusal of a residence card by judicial review.

Background

3. The appellant is a citizen of Sierra Leone and is the unmarried partner of an Italian national, with whom he has been living since 1998. They have three children together.
4. The only issue in this appeal is the appellant's inability to produce a valid national passport to support his EEA Regulations application. The appellant cannot do so. His previous Sierra Leonean passport has expired and is in the possession of the Home Office.
5. The appellant has tried to obtain a new passport from the Sierra Leonean Embassy and sought to rely on the copy passport held by the Home Office. He has not provided alternative evidence of nationality. The respondent was able to obtain an ETD for the appellant in 2010.
6. The respondent's case is that the appellant still has no right of appeal, as he cannot meet the requirements of Regulation 26(2A) of the Immigration (European Economic Area) Regulations 2006, which require an extended family member applicant to produce a passport with the application for leave to remain on the basis of a durable relationship with an EEA national.

First-tier Tribunal decision

7. The First-tier Tribunal dismissed the appellant's appeal, finding that he could not meet the requirements of Regulation 26(2A) of the 2006 Regulations, because he cannot produce a passport.
8. The appellant appealed to the Upper Tribunal. The appellant's grounds of appeal were settled by the Joint Council for the Welfare of Immigrants, but they ceased to act for him with effect from 1 November 2018 and confirmed the termination of their retainer in a letter to the Upper Tribunal.

Permission to appeal

9. Permission to appeal was granted on the basis that the First-tier Judge had arguably erred in her interpretation of Regulation 26 of the EEA Regulations, which regulates

whether there is a right of appeal to the Immigration Tribunals against a decision to refuse a residence card.

Rule 24 Reply

10. There was no Rule 24 Reply on behalf of the respondent.
11. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

12. The appellant explained at the hearing that he was still unable to obtain a Sierra Leonean passport. He had been liaising with passport control in the United Kingdom, but the difficulty was that there had been a change of government in Sierra Leone and that all consular staff had been dismissed by the new government, following the discovery that 800,000 genuine blank passports had been stolen.
13. Mr Lindsay provided the appellant with a document from the Home Office explaining how to get back his expired passport to improve his chances of replacing it with a valid current passport.

Analysis

14. The appellant still does not have a right of appeal, despite the *Sala* correction. Regulation 26(2A) is in very plain terms:

“26. ...(2A) If a person claims to be in a durable relationship with an EEA national he may not appeal under these Regulations unless he produces –

 - (a) a passport; and
 - (b) either –
 - (i) an EEA family permit; or
 - (ii) sufficient evidence to satisfy the Secretary of State that he is in a relationship with that EEA national.”
15. The appellant has not been able to produce a passport, although it seems he has satisfied the Secretary of State that he is in a relationship with the EEA national. Given the vast number of stolen passports, the respondent has not accepted the expired passport as evidence of present Sierra Leonean nationality.
16. The respondent has made no removal directions in this case and the appellant is not currently required to leave the United Kingdom.
17. The Upper Tribunal is a statutory Tribunal and where the 2006 Regulations state that there is no right of appeal, it is not open to the Tribunal to go behind that provision and create a right of appeal. I have considered with care the arguments advanced in the grounds of appeal but I do not consider that they confer on the Tribunal any such power.

18. It remains open to the appellant to make a further application, with that passport once returned, or to challenge the respondent's refusal in judicial review (albeit significantly out of time).
19. In the meantime, applying Regulation 26(2A), there is no right of appeal before the First-tier Tribunal or this Tribunal and the appeal is dismissed.

DECISION

20. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of no error on a point of law
I do not set aside the decision but order that it shall stand.

Date: 6 November 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson