



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

Appeal Number: EA/01305/2019

**THE IMMIGRATION ACTS**

**Determined at Manchester Civil Justice  
Centre  
On 28 October 2019**

**Decision & Reasons  
Promulgated  
On 07 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ARSLAN YOUSAF KHAN  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the appellant:  
For the respondent:  
Officer

Ms Hashmi, instructed by Mamoon Solicitors  
Mr McVeety, Senior Home Office Presenting

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE  
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of the First-tier Tribunal promulgated on 25 July 2019.

2. I am satisfied the Judge erred in failing to consider whether the appellant satisfied reg 8 of the Immigration (European Economic Area) Regulations 2016. ("the EEA Regulations"). That, however, was the substantive issue in dispute. On that basis, it was agreed that the decision involved the making of an error of law and had to be set aside.
3. In terms of remaking the decision, it is evident from the finding that the relationship is genuine and substantive and that there has been cohabitation since 2014, a period of some five years. There was no challenge to that, and it was agreed that this was a durable relationship and thus that reg. 8 of the EEA Regulations was met. On that basis, it is now for the respondent to consider whether or not to exercise her discretion to issue a residence card under reg. 17 of the EEA Regulations.
4. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. By consent, the appeal is allowed to the extent that, regulation 8(2) of the Immigration (EEA) Regulations 2006 is satisfied and it is now for the respondent to consider whether or not to exercise her discretion to issue the appellant with a residence card pursuant to reg 17.

Signed

Date: 28 October 2019



Upper Tribunal Judge Rintoul