



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

Appeal Number: EA/03465/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**On 7 May 2019**

**Decision & Reasons  
Promulgated  
On 14 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**NOUMAN CHAUDHARY**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Akhtar, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan who has divorced his spouse, an EEA national.
2. He has appealed against a decision of the First-tier Tribunal ('FtT') sent on 13 July 2018. There was only one issue in dispute before the FtT. This is because the respondent accepted that all the requirements of the Immigration (EEA) Regulations 2016 ('the 2016

Regs') were met, save regulation 21(5). In particular, the respondent did not accept that the appellant provided a valid national identity card or passport in the name of his EEA national ex-wife.

3. In grounds of appeal prepared on behalf of the appellant it was argued that the FtT erred in law in requiring him to provide a certified copy of identity documents given the particular circumstances of this case. Permission to appeal was granted by Upper Tribunal Judge McWilliam in these terms:

"It is arguable that the judge did not consider whether in the context of previous applications and the arguable acceptance of the EEA national's identity, the appellant had satisfied 21(5) of the 2016 Reg in submitting photocopies of documents or the materiality if any of Reg 42."

4. At the hearing before me, Mr McVeety pointed out the application to appeal to the FTT was four days late. After hearing from both representatives I indicated that in so far as it was necessary to do so I granted an extension of time because it was in the interests of justice to do so. Although the explanation provided by the appellant's solicitors for the late appeal was difficult to follow, it was sufficiently clear that this was not attributable to the appellant. The delay was not lengthy and it is in the interests of both parties for the matter to be resolved promptly.
5. Mr McVeety did not dispute that the FTT failed to engage with regulation 42. The FtT's decision clearly contains an error of law as identified by Judge McWilliam when granting permission to appeal. The 2016 Regs make it clear at regulation 42 that the respondent may accept alternative evidence of identity and nationality "*where the person is unable to obtain or produce the required document due to circumstances beyond the person's control*". The FTT completely failed to consider whether this appellant was unable to provide his wife's passport due to circumstances beyond his control and failed to consider whether the alternative attested copy of the ex-spouse's passport was sufficient in the circumstances.
6. Both parties agreed that I should remake the decision myself and there was no need to provide any further evidence. The appellant's marriage irretrievably broke down and there was an understandable lack of amicable relations between him and his wife to persuade her to submit her passport. The appellant explained that it had been submitted to the respondent and other government agencies previously. The delay in returning the ex-wife's passport caused her inconvenience including preventing her from travelling. The appellant has provided a plausible reason for his ex-wife being unwilling to provide her passport. This is beyond the appellant's control. There was clear evidence that the appellant had previously been able to

submit identity evidence in respect of the self-same EEA national, which has not been disputed.

7. Mr McVeety invited me to consider the appellant's explanation in the round. I have done so and decided there is no reason to dispute the appellant's claim that his ex-wife refused to provide her passport to enable him to produce it and this was beyond his control. There is however alternative evidence of nationality in the form of an attested copy of her passport.
8. The decision of the FtT contains an error of law and is set aside. I re-make the decision by allowing the appellant's appeal.

Signed

*UTJ Plimmer*

Dated

Upper Tribunal Judge Plimmer

7 May 2019