



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03898/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> August 2019

Decision & Reasons Promulgated  
On 16<sup>th</sup> August 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

SALIM [G]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No appearance and representative not present (out of country)

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Belgium born on 10 July 1990. He appeals against the decision of First-tier Tribunal Judge Lucas dismissing his appeal against the refusal to grant him admission to the UK under Regulation 11 of the Immigration (EEA) Regulations 2016.
2. The Appellant did not attend the hearing as he has been refused admission. His representatives are in Belgium and have made written submissions on his behalf.

3. Judge Lucas dismissed the Appellant's appeal on the grounds that no evidence had been submitted by the Appellant and there was no witness statement or other direct evidence to address the refusal decision made by the Respondent on 28 April 2018. The judge found that the burden of proof was on the Appellant and he had failed to discharge that burden.
4. Permission to appeal was granted by Upper Tribunal Judge Grubb on the grounds it was arguable that as the Respondent was alleging dishonesty and/or fraudulent behaviour then the burden was on the Respondent. However, the Respondent had not put in any evidence to establish the claimed conduct by the Appellant and therefore it was arguable the judge erred in law in dismissing the appeal.
5. The Appellant was refused entry to the UK for the following reasons:-

"On 28<sup>th</sup> April 2018 you attempted to facilitate the illegal entry to the UK of PU, a Rwandan national, on a Belgium identity card for which she was not the rightful holder".

6. There was no evidence, other than the assertion made in the refusal letter, before the First-tier Tribunal and therefore the judge erred in law in requiring the Appellant to provide evidence when the Respondent had failed to make out their case of dishonesty or fraudulent behaviour. I find that the judge has made an error of law in applying the incorrect burden of proof. Accordingly, I set aside the decision dated 5 March 2019 and remake it.
7. Mr Walker produced a printout from the database dated 28 April 2018 giving the Home Office reference COQ/5140722 and the Appellant's name. It stated:-

"Passenger attempted to facilitate the entry to the United Kingdom of one RWA national on a BEL identity card. They were party of seven travelling to the United Kingdom to attend a wedding. During interview the RWA national - COQ5140716 - stated that she was the girlfriend of one of the passengers in the minibus and confirmed that everyone knew that she was not the rightful (sic) of the document she produced".

8. Mr Walker also produced a Home Office minute sheet dated 11 May 2018 which stated:-

"The passenger arrived at the UKCZ Coquelles and presented a Belgium identity card. He was travelling to the United Kingdom with six other Belgium nationals and they were going to attend a friend's wedding. On initial interview at the desk the whole group confirmed that they were all travelling together. One of the Belgium nationals was not the rightful holder of the document she presented. Mr HH COQ/5140714 - one of the passengers in the vehicle, confirmed he was boyfriend of the look alike, and confirmed her name as on the Belgium identity card she presented - CM (COQ5140716).

In summary, CM confirmed her true identity as PU and gave her date of birth as [1984], a RWA national. She confirmed she was attending a mutual friend's wedding with her friends and boyfriend in Leicester. She confirmed that the card belonged to a friend of hers who let her borrow it as she did not have a visa for the UK. She had a residence card for Belgium but no visa to enter the United Kingdom. This is why she was using the Belgian identity card. She also went on to say that it was not the fault of the other occupants as they did not know she was using a fake card to travel today until they all got in the van."

9. I find that this evidence is insufficient to show that the Appellant was aware that one of the passengers was using a false identity card and therefore that he had in some way attempted to facilitate her entry. It is clear from the Home Office minute sheet that her boyfriend took responsibility and confirmed her identity card. It could not be said that the other passengers were complicit on the evidence before me. PU's statement that the other occupants in the van did not know that she was using a fake card until they got in the van was not sufficient to show that the Appellant had attempted to facilitate her illegal entry.
10. The Appellant denies knowledge of the use of a false identity card by PU. He did not know PU before she was introduced to him and the other passengers in the van by her boyfriend HH. Although I am not bound by the decision of First-tier Tribunal Judge Cruthers dated 30 January 2019, allowing the appeal of three other passengers in the van, I take judicial notice of his findings.
11. On the facts the Respondent had failed to show that the Appellant would pose a threat to the requirements of public policy if he was allowed admission to the UK. The Respondent has failed to discharge the burden of proof and I allow the Appellant's appeal.

### **Notice of Decision**

**Appeal allowed**

**No anonymity direction is made.**

*J Frances*

Signed  
Upper Tribunal Judge Frances

Date: 12 August 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of £80.

*J Frances*

Signed  
Upper Tribunal Judge Frances

Date: 12 August 2019