Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05368/2017

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 19 March 2019	**On 20 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ABM ABDUL MUTTALIB

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 15 June 1982 and is a male citizen of Bangladesh. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 4 May 2017 to refuse to issue him a permanent resident card as a family member. The First-tier Tribunal, in a decision promulgated on 28 February 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant did not attend the hearing at Birmingham on 19 March 2019 nor did his solicitor, Londonium, attend. I had a letter from the solicitors dated 18 March 2019. This states that, 'we do not have any instructions from the appellant to attend the hearing for the appellant.' The letter also states that the solicitors would not attend the Tribunal hearing, 'however, we still represent the appellant for his immigration matters.' I also had an email dated 18 March 2019 from the appellant himself. This states that the appellant's father had suffered a heart attack in Bangladesh where he was hospitalised. The appellant states that, 'I had to arrange an emergency travel to Bangladesh to see my dad in hospital bed. His current situation is not very well.' Attached to the email are copies of air tickets from London to Bangladesh for Monday, 11 March 2019 and from Bangladesh to London on Saturday, 30 March 2019.

3. The Tribunal Procedure (Upper Tribunal) Rules 2008 provide at paragraph [38]:

   If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

   (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

   (b) considers that it is in the interests of justice to proceed with the hearing.

4. I am satisfied that the appellant has been notified of the hearing because he has written to the Upper Tribunal in respect of that hearing. I am also satisfied that it is in the interest of justice to proceed with the hearing. I consider that the appellant and his solicitor have intended by their respective letters to leave the Upper Tribunal with no option but to adjourn the hearing. The letter from the solicitors is particularly unsatisfactory. The solicitors make it clear in the letter that they continue to represent the appellant yet they failed to attend the hearing. Likewise, the letter from the appellant is not satisfactory. There is no evidence of the sickness of the appellant's father. There is no indication on the tickets as to when they were purchased. Having left the United Kingdom on 12 March 2019, the appellant fails to explain why he did not seek to return in time for the hearing. It is not clear why the appellant, knowing that he could not attend the hearing in person, has either failed to give instructions to his solicitors to attend on his behalf or, more worryingly, has instructed them not to attend the hearing. The conduct of the appellant and his solicitors is such that I am not minded to agree to adjourn the hearing as requested.

5. Moreover, the interests of justice will not be served by relisting this appeal at a later date. That is because the appeal is wholly devoid of merit. There is one ground of appeal. The appellant claims to be entitled to a permanent residence card as the spouse of a Polish citizen exercising Treaty Rights in the United Kingdom. Following the dissolution of his marriage, the appellant claimed a retained right of residence pursuant to regulation 10 of the Immigration (European Economic Area) Regulations 2016. The judge found that the appellant had never been married to the woman he claimed was his wife because, at the time of their wedding, he was already married to a woman living in Bangladesh. By the operation of section 11 (b) of the Matrimonial Causes Act 1973, his marriage was void *ab initio.* The appellant has sought to argue that the Secretary of State's guidance (Free Movement Rights: retained rights of residence Ver 3.0) contradicts the position in statute because it indicates that a marriage is terminated on the date a decree of nullity is issued. That submission has no merit whatever. The Secretary of State's guidance plainly can only apply to marriages which are voidable and not void, as in the appellant's case. In any event, the judge was unarguably right when he concluded that the appellant had never been the family member of an EU national because he had never been lawfully married to her.

6. Finally, I am told by Mr Mills, who appeared for the Secretary of State, that the appellant has been granted a residence card because he is now in a new relationship with an EU citizen. The card was issued on 8 January 2019.

Notice of Decision

7. This appeal is dismissed.

Signed Date 19 March 2019

Upper Tribunal Judge Lane