



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

Appeal Number: EA/08166/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2018**

**Decision & Reasons Promulgated
On 22 January 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MR JABAR UL HAQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Chukwuyulue, Moorehouse Solicitors

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Mailer dismissing his appeal under the Immigration (European Economic Area) Regulations 2016.
2. The appellant is a citizen of Pakistan who applied for a residence card as confirmation on the basis that he is the extended family member of an EEA national exercising treaty rights here, that is on the basis that he and his partner are in a durable relationship.

3. The Secretary of State concluded that the requirements were not met and in the refusal letter made it clear that there was no right of appeal against that decision. The judge however concluded that there was no valid appeal on the basis that the applicant did not fulfil the requirement of Regulation 36(3)(b) of the 2016 Regulations.
4. The appellant appealed against that and was granted permission by First-tier Tribunal Judge Garratt on 23 October 2018, the judge concluding that it was arguable that there was a right of appeal with respect to whether or not the appellant complied with Regulation 36(3)(b)(ii). The Secretary of State accepts that that is so.
5. The difficulty in this case is however not Regulation 36(3) but Regulation 36(1) which states that there is a right of appeal under the EEA Regulations only against an "EEA decision" as defined. The difficulty that this appellant faces is that "EEA decision" is defined so as to exclude certain decisions. It expressly states that an EEA decision does not include a decision to refuse to issue a document under Regulation 18(4), that is a decision not to issue a residence card to an extended family member. That is precisely the decision made in this case and accordingly I conclude that the decision that was sought to be challenged in this appeal is not an EEA decision and on that basis there is no valid appeal. Whilst this has not been raised before today it raises the jurisdiction of the First-tier Tribunal and it is a matter to which I must have regard.
6. I would add that it is unfortunate that this was not picked up earlier because the refusal letter makes it clear that there was no right of appeal. While there may well be arguments which have not been advanced here as to whether the EEA Regulations 2016 properly transpose the Directive which gives rise to them, that is not a matter which I can consider here. I am aware that this issue is being pursued in judicial review in a matter to be heard by the President of this Tribunal sitting in the High Court but, as the matter is, I have no jurisdiction and therefore I dismiss the appeal.
7. In conclusion, although the First-tier Tribunal erred in concluding that it had no jurisdiction owing to the operation of reg. 36(3) of the EEA Regulations, that error was not material as, for the reasons given, the First-tier Tribunal did not have jurisdiction to consider the appeal. I therefore uphold its decision.

Signed

Date 11 January 2019



Upper Tribunal Judge Rintoul