



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/05486/2021

(UI-2022-000474)

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre**

On the 4 July 2022

Decision & Reasons Promulgated

On the 01 September 2022

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MUHAMMAD HASNAIN AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Tan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 16 October 1987. He appealed to the First-tier Tribunal under the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) against a decision of the respondent dated 23 March 2021 to refuse to issue a residence card. By a decision promulgated on 11 January 2022, the First-tier Tribunal dismissed his appeal. The appellant now appeals, with permission to the Upper Tribunal.

2. The Secretary of State refused the appellant's application in the following terms:

Your application has been considered under regulation 8 (2) (a) and 6 of the Immigration (European Economic Area) Regulations 2016 (as amended). You have not provided adequate evidence in support of your application as the extended family member of a person exercising Treaty Rights in the UK. You claim to be the brother of an EEA national however you have not provided any evidence to support this. As you have failed to effectively evidence your relationship no further consideration has been given to the other requirements which need to be satisfied under the Regulations including whether your EEA national sponsor is exercising Treaty rights as a qualified person. If you are able to supply evidence that proves you are the relative of an EEA or Swiss national, you may submit a further application.

3. The application was considered on the papers by the First-tier Tribunal judge. He found as a fact that the appellant is the brother of an EEA national but dismissed the appeal because he found that there was insufficient evidence to show that the appellant's sister had been exercising Treaty Rights for a continuous period of 5 years.
4. It was unfortunate for both parties that this appeal was determined on the papers. It was legitimate for the respondent to give only one reason for refusing the application but, equally, it is understandable that the unrepresented appellant provided evidence to the Tribunal on appeal which addressed only that single reason. It may be argued that the appellant should have prepared his appeal so as to cover every aspect of Regulation 8 but, in the particular circumstances here, the appellant having no legal representation on a paper appeal that would have been unrealistic. Given the very limited nature of the refusal, I find that the judge has erred in law by finding against the appellant on a matter of which he had been given no notice.
5. The appellant attended the initial hearing in person. I suggested to him that he should consider seeking legal advice before the next hearing in the First-tier Tribunal. I explained to him that he should attend that hearing prepared and able to prove that he meets all the requirements of the 2016 Regulations. I also suggest to Mr Tan, who appeared for the respondent, that the Secretary of State look again at this application in the light of my decision and the finding of the First-tier Tribunal as regards the relationship (which I preserve) and, should she seek to oppose the appeal on any specific basis, she should consider notifying the appellant in writing of the case against him before the next hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The findings are set aside, save that the finding at [4] that the appellant and sponsor are siblings is preserved.

Listing Directions: first available date at the Manchester First-tier Tribunal; face to face; not before Judge Chohan: 1.5 hours; No interpreter

Signed
Upper Tribunal Judge Lane

Date 4 July 2022

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,
the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.