



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004038

First-tier Tribunal Nos: EA/51421/2022
IA/09790/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MOHAMMAD ALI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant:

Mr M Parvar, Senior Home Office Presenting Officer

For the Respondent:

Mr R Ahmed of Counsel instructed by S Z Solicitors Ltd

Heard at Field House on 8 March 2024

DECISION AND REASONS

1. Mr Ali is a citizen of Pakistan whose date of birth is recorded as 1st November 1978. On 24th March 2021 he made application for permanent residence as the unmarried partner of Sandra Bieire, a Latvian national, and therefore a relevant EEA citizen. On 25th January 2022 a decision was made to refuse an application for administrative review on the basis that Mr Ali had not produced a relevant document as the durable partner of the relevant EEA citizen, namely Sandra Bieire. The relevant provisions of the Immigration Rules are EU11 and EU14.
2. Mr Ali appealed and on 19th July 2023 his appeal was heard by First-tier Tribunal Judge Buckwell sitting at Hatton Cross. In a decision dated 28th July 2023 Judge Buckwell allowed the appeal. It appears from reading his decision that there was some uncertainty as to whether the issue before him was solely whether there

was a durable relationship or whether a relevant document was required to which I return below.

3. Not content with the decision of Judge Buckwell by notice dated 3rd August 2023 the Secretary of State for the Home Department (“SSH D”) made application for permission to appeal to the Upper Tribunal on the basis that:
 - (i) no relevant document as required by Appendix EU was provided, and
 - (ii) on the basis that the Immigration Rules could not be met by a durable partner whose residence had not been facilitated prior to the specified date.
4. On 18th September 2023 First-tier Tribunal Judge Khurram granted permission, thus on 3 November 2023, the matter came before me. The matter was adjourned on that occasion because those representing Mr Ali had not filed a Rule 24 response. Directions were issued with a timetable.
5. In the event there were some procedural difficulties which arose and strictly speaking the appeal fell to be determined in the Secretary of State’s favour without more because on its face procedural matters had not been complied with but very fairly and quite properly Mr Parvar conceded the application made for relief from sanctions made on behalf of Mr Ali and so the matter continued before me for consideration on the substantive matters raised in the Notice of Appeal.
6. After a general conversation with both representatives whom I commend for the assistance which they gave to this Tribunal, it was conceded that irrespective of whatever else occurred in this matter the appeal had to be allowed because there was a strict requirement for a “relevant document” within the meaning of the Rules which Mr Ali had been unable to provide at the right time and indeed did not produce at all. In those circumstances the Rules were not met and quite properly as I have observed Mr Ahmed conceded the appeal.
7. It may be, and it is not a matter for me, that Mr Ali is not left without remedy. There is some evidence within the bundle that those acting for Mr Ali wrote to the Secretary of State on 27th June 2019 asking for Mr Ali’s passport in order that he could get married, there is no suggestion that it was his intention to marry anyone other than his current Sponsor. The author of the email from the Home Office said, “I’m afraid that I cannot send the original document back to you, however, if you provide the details for the registry office in question I will be able to send them a certified copy of the document”.
8. Mr Ahmed argued that that email evidenced facilitation prior to the relevant date. It was not necessary for me to make a finding because the relevant document was not produced but if it is the case that the only reason in reality Mr Ali could not obtain the relevant document was because it was not accepted by the Secretary of State that he was in a durable relationship since 2015, which in fact he was by a judicial finding of Judge Buckwell, which has not been challenged, one has to ask rhetorically how was he to obtain the relevant document. Again, that is not a matter for me. My hands are tied by the strict Rules which relate to appeals of this kind as I have said and Mr Ahmed quite properly and fairly conceded the appeal.

Notice of Decision

9. The appeal of the Secretary of State is allowed.
10. The decision of Judge Buckwell is set aside and remade such that the decision of the First-tier Tribunal is that the appeal against the decision of the Secretary of State in the First-tier Tribunal is dismissed.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 March 2024