



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28812/2011

THE IMMIGRATION ACTS

Heard at Glasgow
On 4 October 2013

Determination Promulgated
ON 4 November 2013

Before

MR C M G OCKELTON, DEPUTY PRESIDENT
UPPER TRIBUNAL JUDGE DEANS

Between

MR BARHAM MURDOCHY
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Stevenson, McGill & Co
For the Respondent: Mrs M O'Brien, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Clough dismissing this appeal against a refusal to issue a residence card on the basis that the appellant is the unmarried partner of an EEA national.
- 2) The appellant is a national of Iraq. He claimed to be in a relationship with a Polish woman, referred to for the purpose of this appeal as KJ. His alleged partner was a student living in Edinburgh and working part time.

- 3) The Judge of the First-tier Tribunal found that the appellant and KJ, with whom the appellant claimed to be in a relationship, had never lived together and, from the evidence, did not intend to do so until the appellant had secured some immigration status in the UK. The judge was not satisfied that the appellant was in a durable relationship with KJ, whom the judge accepted was a qualified person.
- 4) Permission to appeal was granted on the basis that it was arguable that the judge's finding that the couple were not in a durable relationship was one which was not open to her and was not properly reasoned.
- 5) Shortly before the hearing, on 2 October 2013, the appellant's solicitors wrote to the Tribunal to state that they were without instructions. They had been informed that the appellant had taken advantage of an Assisted Voluntary Return (AVR) on 30 April 2013 and that this had been verified by the Presenting Officer's Unit. At the hearing, Mrs O'Brien confirmed on behalf of the respondent that this was in fact the case.
- 6) Mr Stevenson pointed out that as the appeal was made under the EEA Regulations it is not treated as abandoned by virtue of the appellant having left the United Kingdom. Nevertheless, we are satisfied that by his conduct in leaving the UK under the AVR scheme without instructing his solicitors to continue his appeal the appellant has demonstrated that he does not intend to pursue his appeal.
- 7) We were, in addition, informed by Mr Stevenson that he understood the relationship had broken down between the appellant and KJ. Based on this information, we are satisfied that the appellant has no proper basis on which to pursue the appeal. Accordingly, the appeal is dismissed and the decision of the Judge of the First-tier Tribunal shall stand.

Conclusions

- 8) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- 9) We do not set aside the decision.

Anonymity

- 10) The First-tier Tribunal did not make a direction for anonymity and, no application having been made, we make no order in this regard.

Signed

Date 4th November 2013

Upper Tribunal Judge Deans