



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

Appeal number: IA/39093/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On March 9, 2016**

**Decision & Reasons Promulgated
On March 29, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR WASIM AHMED
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

In person

Respondent

Mr Diwnycz (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. The appellant entered the United Kingdom as a visitor on in 2009 and was given leave to remain here as a visitor until 2010. He applied for leave to remain as a family member but this was refused on June 1, 2012. On July 25, 2014 he sought a residence card based on a durable relationship with his partner, an EEA national. The

respondent refused his application on October 6, 2014. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.

2. The appeal came before Designated Judge of the First-tier Tribunal Garrett on February 23, 2015 and in a decision promulgated on April 20, 2015 he refused the appellant's appeal finding firstly, he was not in a durable relationship and secondly, his partner had not satisfactorily demonstrated she was a qualified person under Regulation 4 of the 2006 Regulations.
3. The appellant lodged grounds of appeal on May 5, 2015 submitting the First-tier Judge had erred.
4. Designated Judge of the First-tier Tribunal MacDonald gave permission to appeal on basis the Judge may have erred in respect of his recording of the appellant's partner's evidence in relation to her income and that if the Judge had then this error played a major part in his assessment of the durable relationship.
5. In a Rule 24 letter dated June 28, 2015 the respondent opposed the appeal. She argued there was no evidence to support the appellant's claim the Judge had erred in his recording of the evidence.
6. The matter came before me on the above date and I heard submissions from both Mr Diwnycz and the appellant.
7. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order.

SUBMISSIONS

8. Mr Ahmed argued his partner had provided documents to support her evidence and that if she had said she earned £50-60 per week she clearly meant per day because those figures would not have matched her reported income given to HMRC. He submitted she was working and there were nothing in the regulations that stated how much had to be earned. He stated they were struggling to survive on his partner's income because he was not allowed to work. He argued the Judge had erred.
9. Mr Diwnycz relied on the rule 24 response and submitted the Judge had correctly recorded the appellant's partner's evidence as evidenced by both the court record and his colleague's contemporaneous note. The Judge had assessed the quality of the evidence and based on the evidence found

inconsistencies and these inconsistencies fed into his assessment of their relationship.

DISCUSSION AND FINDINGS

10. The appellant had been represented until recently and the grounds of appeal had been prepared by his representatives. In giving permission the Judge noted that the appellant's appeal was based on the fact his partner claimed she had stated she said she earned £50-60 "per day" and not "per week" as recorded by the Judge. It is this error that it was submitted infected the remainder of the decision.
11. I have checked the record of proceedings (copy was sent to the appellant's representatives last year) and I also checked the respondent's record of the evidence. The appellant's representative did not submit her record. The available records both confirm the appellant's partner stated she was asked how much she earned each week and her reply was £50-60 per week.
12. The Judge's record is accurate and as I explained to the appellant I had to then consider the decision based on the fact the evidence was accurately recorded. In paragraph [19] of his decision the Judge set out in some detail the inconsistencies that followed from that evidence. The records showed one income but the witness gave evidence that was significantly different from those records. There was a lack of bank statements to support her income and the accounts were unaudited and based on what the firm were told. The Judge had regard to financial problems that existed and ultimately concluded he was not satisfied she earned what was being claimed.
13. The Regulations do not state how much a person must earn but to be a qualifying person the appellant had to demonstrate his wife was self-employed within the definition of Regulation 4(b) of the 2006 Regulations.
14. The appellant suggested that he should have been told what should be lodged but I explained to him that was not the Tribunal or respondent's role especially where he was represented.
15. The Judge's decision could be viewed as harsh but being harsh does not mean there is an error of law. There were unexplained inconsistencies and I conclude it was open to the Judge to find Regulation 4(b) was not met. The appeal to me must fail for this reason alone.
16. The adverse finding fed into his finding on durable relationship. The Judge was aware of all the evidence but for the reasons given in paragraphs [19] to [22] he concluded the appellant had failed to show there was a durable relationship.

17. Both findings were open to the Judge and in those circumstances there is no error.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis