



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

Appeal Number: EA/01294/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre  
On 20 September 2018**

**Decision & Reasons Promulgated**

**On 15 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**MUHAMMAD NAEEM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr Howells, Home Officer Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan and was born on 20 September 1974. On 10 November 2017 he applied for a document certifying permanent residence under Regulation 15 (1) (b) of the Immigration (European Economic Area) Regulations 2016 (EEA Regulations) as the extended family member of Ana Mafalda Dias Goncalves.
2. The Respondent refused his application in a Reasons for Refusal Letter (RFRL) dated 17 January 2018 on the basis that the Respondent was not satisfied that the Appellant met the requirements of Regulation 8 (5) of the EEA Regulations and was the partner of and in a durable

relationship with the EEA national. The Appellant appealed this decision to the First-tier Tribunal and that appeal was dismissed by First-tier Tribunal Judge Manchester in a decision and reasons promulgated on 19 March 2018. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Maller on 25 June 2018. Permission was granted on the grounds that the Judge's findings at [19] were arguably contrary to the evidence before him. Further, it was arguable that the Judge had not placed any reliance on bank statements produced by the Appellant and his partner covering the period of their life together.

### **The Grounds**

3. The grounds assert that the Judge made findings that were contrary to the evidence. It was the Appellant's case, as set out in his witness statement at [13] that he did not pay bills for his property because it was included in the rent. This was confirmed by his landlord in a letter. The Appellant gave this explanation for why he did not receive utility bills at his home address. The sponsor confirmed this in her statement at [9]. It is asserted that the landlord also confirmed this in his statement at [4].
4. It is argued that there was no basis for the Judge to reject the information provided by the landlord in his statement and consequently the Judge's finding that the Appellant was unable to satisfactorily explain why, if he was living with the EEA national as claimed, he was unable to produce Council tax and utility bills in joint names is said to be unsafe.
5. The Appellant also argues that the Judge misdirected himself at [12] regarding the letter issued by the accountant as the letter was obtained for the sponsor and not her partner. It is also asserted that the Judge erred in relation to the bank statements which covered the five years and were evidence of their life together.
6. The appeal therefore comes before the Upper Tribunal in order to determine whether there was an error of law in the decision of the First-tier Tribunal and if so whether to set that decision aside.

### **The Hearing**

7. The Appellant did not attend the hearing but submitted a bundle of documents. It was clear from the bundle that he was aware of the date and place of the hearing and so at 12.00pm I exercised my discretion to hear the appeal in his absence. I heard submissions from Mr Howells. He said that the Judge made the decision on the papers at the request of the Appellant. In reaching adverse findings the Judge addressed himself to the documentary evidence before him. Unfortunately, the Respondent had not submitted a bundle. The Judge carefully considered

all of the evidence and reached reasoned findings. The main part of the grounds related to [18] of decision and the possible inconsistency as to whether the Appellant was liable to bills and Council tax. The grounds as pleaded ignored the Judge's concerns at [16] and [17] about 6 tenancy agreements on which he considered there were identical signatures. He expressed concerns in relation to the fact that they were photocopies and bore such similarities which would be remarkable if issued separately on each date. Even if the Judge made an error in relation to the tenancy agreements, he had more serious concerns about the agreements as evidence of cohabitation and any error in relation to the subclause in the tenancies was not material.

8. Paragraph 7 of the grounds related to [21] of the decision. If there was a factual error in relation to an accountant's letter it was not a material error of law. The key point was that the Appellant did not explain why correspondence had been sent to address when she had only been a partner for 2 years. There was no corroborative evidence regarding the sister's address. It was a further example of the Judge assessing the evidence in a meticulous way and assessing whether the evidence supported or did not support the claimed cohabitation.

## **Discussion**

9. The appeal was dealt with in the absence of a hearing at the Appellant's request. The First-tier Tribunal did not find that the evidence provided by the Appellant demonstrated that he was in a durable relationship with an EEA national for a five year period. He considered the tenancy agreements which had been submitted by the Appellant at [16] to [19] of the decision. The Respondent contended in the RFRL that the tenancy agreements were photocopies, contained absolutely identical signatures for the Landlord and the Appellant in terms of both the signatures and their place on the pages and the signature pages were not dated. The Respondent also contended that the Appellant had not produced any corroborating evidence of joint residence such as Council Tax bills and utility bills showing both names.
10. The First-tier Tribunal Judge considered the Appellant's explanation in relation to the signatures and gave adequate reasons for rejecting it at [16]. He concluded that the Appellant's explanation that he may have attached the wrong signature pages to the wrong tenancy agreements was not satisfactory given that the signatures were identical. The Judge had further, adequately reasoned, concerns about the tenancy agreements before him at [17].
11. The Judge also dealt with the Appellant's explanation as to why there were no Council tax bills and no utility bills in joint names. He noted the Appellant's explanation that the bills were included in the rent and that the agreements stated that the rent included utility bills and rates. However, he found that this was in contradiction to paragraph 3.2 of

the agreements which required the tenant to pay to the authorities to whom they were due, Council tax and other bills. Whilst the grounds assert that the Judge did not have regard to the witness statement of the landlord in coming to his conclusions in relation to the issue of the reliability of the tenancy agreements this is not correct. The Judge states at [22] that he had regard to the witness statement of the stated landlord and the Schedule of Rent payments in joint names which he states he has considered as part of the exercise of looking at the evidence in the round. However, given his concerns in relation to the tenancy agreements he finds that reliance could not be placed on those documents. It was open to the Judge to conclude in the light of the inconsistencies that he identified in the agreements and in the light of his findings in relation to the signatures on the documents that they were not reliable evidence of cohabitation.

12. The First-tier Tribunal Judge found that there was an inconsistency in the Accountant's letter at page 54 of the Appellant's bundle which identified the business as "Ms A Goncalves T/A Care & Clean" rather than as a partnership identity. Further, the accounts were stated to be in the name of "Ms A & Ms GS Goncalves T/A Care & Clean" whereas the partner was stated to be Ms R Goncalves as was the undated letter from her at page 53. The First-tier Tribunal found that this letter did not explain why any correspondence had been sent to her address for several years when she had only been a partner for 2 years. Further, he found that there was no attempt to produce corroborative evidence to show that this was the EEA national's sister's address. Further, the tax return at pages 61 to 69 had the EEA national's address as [ ~ ] despite it being her Personal Tax Return.
13. At [19] of his skeleton argument in his appeal bundle the Appellant states that the letter issued by his partner's accountant at page 54 of the bundle filed with the First-tier Tribunal was obtained for his partner only. She did not ask the accountant to confirm the business address of her sister. The letter from his partner's sister confirmed that her address was being used for business purposes and that official correspondence was sent to her address.
14. I find that it was open to the First-tier Tribunal Judge to find on the evidence before him that there were discrepancies in the documentation relating to the Appellant's sponsor's business. The initials of her business partner/sister differed as between the documents as her name was given as both "Ms GS Goncalves" and "Rita Goncalves". Further, the address on her personal tax return was not her home address and although her sister was appointed as partner in January 2016 there was no evidence to show that the accounts or tax returns had been sent to the Appellant's address, rather than his sponsor's sister's, before that date. It was therefore open to the Judge to find that this evidence did not assist the Appellant in demonstrating

that he was in a durable relationship with his sponsor for a five year period.

15. Further, it is clear from [22] of the decision that notwithstanding the fact that the bank statements were not before the First-tier Tribunal Judge, he accepted that they were before the Respondent and this was not a matter that he held against the Appellant.
16. In all the circumstances therefore, it was open to the Judge to find that the evidence before him did not establish that the Appellant had resided in the UK with the EEA national in accordance with the Regulations for a 5 year period or that he was in a durable relationship.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain a material error of law and I do not set it aside.

No anonymity direction is made.

Signed

Date 2 October 2018

A handwritten signature in black ink, appearing to be 'L J Murray', enclosed in a thin black rectangular box.

Deputy Upper Tribunal Judge L J Murray