



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

Appeal Number: EA/09440/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> November 2018**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR AKHTAR HUSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, of Counsel, instructed by M & K Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a Pakistani national. On 4<sup>th</sup> May 2007 he applied as a non-EEA national for a permanent residence card under the 2016 Immigration (European Economic Area) Regulations.
2. The application was refused by a decision on 13<sup>th</sup> November 2017 on the basis that the appellant had failed to provide a valid passport or national identity document as evidence of his sponsor's identity and as such did not meet the requirements of Regulation 21(5).

3. The appellant sought to appeal against the decision, which appeal came before First-tier Tribunal Judge Bristow for hearing on 5<sup>th</sup> June 2018.
4. The issue for the appeal was whether the appellant could produce the valid national identity card or passport of the sponsor or could prove to the civil standard that he could not comply with the requirement to produce her valid national identity card or passport because of circumstances beyond his control.
5. The appeal was dismissed.
6. The appellant sought to appeal against the decision, permission to do so to the Upper Tribunal was granted.
7. Thus the matter comes before me to determine the issues as to error of law.
8. The appeal is twofold, firstly it is said that the Judge applied a strict interpretation beyond that which the Regulations require. Secondly that the Judge failed properly to look at the evidence that was adduced on behalf of the appellant to discharge the burden.
9. In terms of the narrow approach taken to the 2016 Regulations, reliance is placed upon paragraph 14 of the determination. It is said that the Judge failed to read Regulations 21(5) and (6) in the light of Regulation 42 of the same Regulations. Such provides as follows:-
  - “(1) Subject to paragraph (2) where the provision of these Regulations requires a person to hold or produce a valid national identity card issued by an EEA State or a valid passport, the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required documentation due to circumstances beyond the person’s control”.
10. In fairness to the Judge, however, the appeal proceeded on the basis that the appellant had adduced sufficient evidence to discharge his burden of showing that he was unable in the circumstances beyond his control to provide the documentation which was required.
11. It was the case on behalf of the appellant that he had contacted his former spouse by email in May of 2018 and had received a reply from her on 2<sup>nd</sup> June 2018 categorically refusing to provide him with her identity documents.
12. Although reference is made in paragraph 17 to that email chain, no regard is thereafter had to it in the assessment of evidence. The Judge noted that the appellant had not adduced evidence from Ahmed Rashid which could have corroborated his attempts to obtain the documents. It is said that a

statement from Imran Choudhury could have corroborated the email address.

13. It is difficult to understand why such evidence was required, given the emails that were presented, indeed which I have seen. Criticisms were made of the appellant that he had failed to apply pursuant to Rule 15(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 for Renata Chudacikova to produce her passport or valid identity card.
14. The Judge therefore concluded that there was insufficient evidence to support the appellant's contention.
15. It was contended that it was unreasonable for the Judge to apply such a strict interpretation to matters and to expect corroboration from evidence that had been presented by the appellant when the issue of credibility had not been specifically challenged. It is said that no balanced approach had been made or any assessment given as to the emails that had been presented.
16. Both parties were in agreement that such matters as were raised did amount to an error of law, particularly as to the fairness of the proceedings.
17. In the circumstances I invited to set aside the decision and to send it back to the First-tier Tribunal for re-hearing in accordance with the Senior President's Practice Directions. This I do.
18. It is of course for the appellant to adduce cogent evidence as to his attempts to obtain the document at the next hearing. I note in terms of the email chain that notwithstanding that the decision was November 2017, little would seem to be done by him to contact his former partner until very shortly before the hearing. It was said that he was unrepresented. He was now represented and it may be that attempts can be made to contact his ex-wife in order to seek her cooperation to produce her identity card or indeed to present it to the solicitors in such a way that a copy can be made certified as a true copy of the original.

### **Notice of Decision**

19. The decision of the First-tier Tribunal should be set aside to be remade by the First-tier Tribunal upon a re-hearing on all relevant issues.

No anonymity direction is made.



Signed

Date 7<sup>th</sup> Nov 2018

Upper Tribunal Judge King TD