



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

Appeal Number: EA/05423/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 19 July 2019**

**Decision & Reasons Promulgated
On 24 July 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

RANA NIAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid, Counsel

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who has divorced his spouse, an EEA national with Latvian citizenship. He has appealed against a decision of the First-tier Tribunal ('FtT') sent on 15 March 2019, in which it dismissed the appellant's appeal against a decision refusing to grant him a residence card, based upon his former relationship with his ex-spouse.
2. Although the respondent's decision letter raised two issues of concern: insufficient evidence that the ex-spouse was exercising Treaty rights and a failure to provide a passport / identity card for the ex-spouse, at the FTT hearing the respondent conceded the

former issue as no longer being in dispute. There was therefore only one issue in dispute before the FtT. This is because the respondent accepted that all the requirements of the Immigration (EEA) Regulations 2016 ('the 2016 Regs') were met, save regulation 21(5). The respondent did not accept that the appellant provided a valid national identity card or passport in the name of his EEA national ex-wife.

3. In grounds of appeal prepared on behalf of the appellant it was argued, inter alia, that the FtT erred in law in failing to take into account an email exchange confirming the appellant's evidence that his ex-spouse refused to provide him with her passport. This email exchange is to be found at pages 28 to 29 of the bundle before the FtT. Permission to appeal was granted by FtT Judge Parkes. The respondent submitted a rule 24 notice dated 22 May 2019, seeking to uphold the decision of the FtT.
4. At the hearing before me Mr Bates conceded that the FtT's decision contains the errors of law identified in the grounds of appeal and that the decision should be remade by me, and allowed.
5. I am satisfied that Mr Bates' concession was entirely appropriate. The FtT's adverse credibility finding that the ex-spouse would not have refused to have provided her passport, yet have been willing to have provided her tax documents, fails to take into account the clear explanation to be found in the string of emails between the appellant and his ex-spouse between June 2018 and January 2019. This is an error of law and I set aside the FtT's decision.
6. Both parties accepted that I could remake the decision without hearing any evidence by allowing the appeal. The appellant's marriage irretrievably broke down (hence the decree nisi order dated 24 January 2018) and there was an understandably lack of amicable relations between the parties. This is clear from the string of emails between them. The ex-spouse felt able to give her tax documents but not her passport and gave apparently cogent reasons for this. The 2016 Regs make it clear at regulation 42 that the Respondent may accept alternative evidence of identity and nationality "*where the person is unable to obtain or produce the required document due to circumstances beyond the person's control*". I am satisfied that the appellant has been unable to provide ex-spouse's passport due to circumstances beyond his control.
7. The appellant explained that the respondent had previously provided him with a residence card based upon his marriage to an EEA citizen and her nationality had not changed. Indeed, at the hearing before the FtT the respondent's representative

accepted that the ex-spouse was exercising Treaty rights - in order to do so she must have been an EEA citizen. Mr Bates checked the file and was able to confirm the identity of the ex-spouse - see Rehman (EEA Regs 2016 - specified evidence) [2019] UKUT 000195.

8. The decision of the FtT contains an error of law and is set aside. I re-make the decision by allowing the appellant's appeal.

Signed *UTJ Plimmer*

Dated

Upper Tribunal Judge Plimmer

19 July 2019