Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05596/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 August 2019	**On 15 August 2019**

Before

UPPER TRIBUNAL JUDGE COKER
UPPER TRIBUNAL JUDGE SHERIDAN

Between

ISHTIAQ MEHMOOD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is appealing against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the respondent to refuse his application for a residence card to confirm he is a family member of an EEA national exercising Treaty rights in the UK.

2. The respondent refused the appellant's application on the basis that the only evidence he supplied to support the claim that his wife ("the sponsor") was

exercising Treaty rights was a P60 issued for the tax year 2016/2017 ("the P60"). The P60 shows an income for the tax year ending 5 June 2017 of £3,186.

3. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Housego ("the Judge") on 6 March 2019. In a decision promulgated on 12 March 2019, the Judge dismissed the appeal.

4. The appellant did not attend the hearing before the Judge. The background to his non-attendance is as follows:

   (a) On 27 February 2019 the appellant wrote to the First-tier Tribunal requesting an adjournment because the sponsor's grandmother died and the sponsor would not be available for the hearing. Appended to the letter was a copy of the sponsor's boarding pass showing a flight to Lisbon departing on 27 February 2019.

   (b) On 5 March 2019 the application was refused on the basis that no evidence of the bereavement had been provided. This was emailed to the firm of solicitors who, at that time, were on the record as acting for the appellant. Following receipt of this email, the appellant's solicitors wrote to the Tribunal advising that they had been unable to contact, and did not have instructions from, the appellant.

   (c) The appellant states that he received notification by letter that the adjournment had been refused on 7 March 2019.

5. The Judge dismissed the appeal on the basis that there was no evidence to show the sponsor was exercising Treaty rights and that the only evidence submitted to support the claim that she was exercising Treaty rights was the P60.

6. The appellant did not attend the hearing in the Upper Tribunal. The day before the hearing he emailed the Tribunal advising that he would not be attending because of a GP appointment and requesting that the hearing proceed in his absence.

7. The grounds of appeal argue that it was procedurally unfair for the hearing before the First-tier Tribunal to not be adjourned.

8. Having considered all of the evidence that was before the First-tier Tribunal, the correspondence on the Court file, and the appellant's arguments as set out in the grounds, we have reached the conclusion that the refusal to accede to the adjournment request was not unfair and did not result in the deprivation of the appellant's right to a fair hearing.

9. Firstly, there was no reasonable basis for the appellant to not attend the hearing on 6 March 2019. The appellant has not given any reason why he (as opposed to the sponsor) could not attend and in the absence of receiving a response to his adjournment application, there was no basis for him to assume anything other than that the hearing was proceeding.

10. Secondly, it was reasonable, and not unfair, for the First-tier Tribunal to email the adjournment decision to the solicitors who, at that time, were on the record as acting for the appellant.

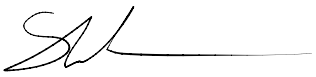
11. Thirdly, in his letter requesting an adjournment, the appellant did not include evidence of the bereavement or give reasons why the attendance of the sponsor at the hearing was necessary. In these circumstances, it was not unfair or unreasonable for the adjournment to be refused. Had the appellant attended the hearing he would have been able, should he have wished to do so, to proffer further arguments in favour of an adjournment. However he did not attend, and in the absence of any further arguments it was not unfair for the Judge to proceed without an adjournment.

12. In any event, the attendance of the sponsor (or, indeed, the appellant) could not have made a material difference to the outcome of the appeal. To succeed in the appeal, it was necessary for the appellant to provide evidence that the sponsor was exercising Treaty rights. This was made clear to the appellant in the refusal letter, where it was highlighted that submitting only the P60 was not sufficient. However, the appellant did not submit documentary evidence to show the appellant was exercising Treaty rights, other than the P60. Nor did he submit a witness statement from the sponsor explaining how she was exercising Treaty rights. Given the paucity of documentary evidence and absence of a witness statement from the sponsor, the attendance of the appellant (and/or sponsor) would not have changed the outcome of the appeal.

Notice of Decision

13. The decision of the First-tier Tribunal does not contain an error of law and stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated:
8 August 2019