



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

Appeal Number: DA/00312/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> November 2014**

**Decision and Reasons  
Promulgated  
On 17<sup>th</sup> November 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR SAADE JAMEL MOHAMMED AWAWDAH  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Slatter (Richmond Chambers LLP)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant in relation to a Determination of the First-tier Tribunal (Judge Lobo) promulgated on 15th August 2014.
2. In his Determination Judge Lobo found that as the Appellant's relationship with an EEA national had not been properly considered by the Secretary of State when she refused his application to revoke a deportation order, the decision was not in accordance with the law. He allowed the appeal to the

limited extent that the matter was remitted to the Secretary of State for her to make a lawful decision.

3. Unusually, it is the Appellant who challenges that decision. It is the Appellant's case, as argued before me, that Judge Lobo did not have jurisdiction to decide as he did because the question of the relationship with the EEA national was raised in response to a Section 120 notice and thus there was no obligation on the Secretary of State to consider the matter as decided in Patel [2013] UKSC 72. The decision was therefore not unlawful and the Judge ought to have considered the appeal substantively on all the grounds as he was required to do by S.85 Nationality, Immigration and Asylum Act 2002.
4. I find that the First-tier Tribunal did not make an error of law. It is quite clear from the refusal letter accompanying the decision that the Secretary of State had been made aware that the Appellant was in a relationship with a Lithuanian National in the UK. Having been made aware that that was the claim, the Secretary of State should therefore have firstly considered whether that position was accepted and if so the decision should have been made under the EEA Regulations and not under the Immigration Rules. The Secretary of State did not do that and therefore I agree with the First-tier Tribunal Judge that her decision was unlawful. The question of his relationship with an EEA national was not, contrary to the arguments before me, first raised in the S.120 notice. Had it been there would have been force in the Appellant's argument. As it is I can find no error of law in the Judge's decision. Having decided that the decision was unlawful there can be no consequences for the Appellant that flow from that decision and therefore there are no substantive matters to be considered.
5. The situation is that the matter remains outstanding before the Secretary of State to make a decision on the application to revoke a deportation order. If the Secretary of State accepts the Appellant's claim to be in a durable relationship with a qualifying EEA national then her decision falls to be made under the EEA Regulations and of course under Regulation 27 the refusal would not carry an in country right of appeal. If the Appellant's case falls to be considered under the EEA Regulations then the Immigration Rules have no relevance (para5). He will retain the right to argue Article 8. Those matters however are not before me and will properly fall to be decided after the Secretary of State has reached a lawful decision.
6. The appeal to the Upper Tribunal is dismissed

Signed

Date 17<sup>th</sup> November 2014

Upper Tribunal Judge Martin