



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

Appeal Number: IA/47372/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17 June 2014

Determination

Promulgated

On 29 July 2014

Before

**LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE
DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

Between

MR ABDULLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Nasim

For the Respondent: Ms A Everett

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination of the First-tier Tribunal dated 5 March 2014.
2. The First-tier Tribunal found that the respondent in this appeal, whom we will call the appellant for ease of reference and for consistency, was an extended family member of an EEA national exercising treaty rights in the UK, in terms of the Immigration (EEA) Regulations 2006. He relied on certain written and oral evidence into which we do not go for present purposes.

3. The background to the appeal is that on the day of the hearing the appellant's bundle was received. It contained a number of documents which went to the question of the relationship and also the question of the exercise of the treaty rights. The Presenting Officer sought an adjournment on the basis that the respondent wished to undertake checks on these documents and had not had an opportunity to do so. For reasons set out in the determination the First-tier Tribunal refused the adjournment but allowed a certain amount of time to the Presenting Officer to consider the papers.
4. The failure to grant an adjournment was a ground of appeal to this Tribunal but Ms Everett has abandoned that ground on the basis that she has not been able to identify which particular documents were concerned and is not in a position to advance the argument. We are grateful to her for her proper response to the difficulty in which she now finds herself.
5. There are two other grounds of appeal, however. The first effectively is that the First-tier Tribunal failed to give adequate reasons for its findings, and the grounds of appeal mention a number of inconsistencies in the evidence which could, on one view, undermine the credibility of the core of the appellant's case. The judge who heard the evidence found that the appellant's claim at its core was credible, however, and that the relationship was durable. It is fair to say that another judge hearing the same evidence and relying on the same documents might have come to a different conclusion but that is not the issue. Ms Everett, understandably in our view, did not seem to argue this ground with much enthusiasm. We are satisfied that the findings have been adequately reasoned. The judge heard the evidence, noted the inconsistencies and was obviously aware of them but that did not deter him from making the decision which he did and we are satisfied that the decision was one which was open to him, so that ground of appeal fails.
7. Nonetheless there is a further ground of appeal in that the determination at paragraph 92 simply says "I therefore allow the appellant's appeal". This, however, is a case which is governed by Regulation 17(4), which is to the effect that the Secretary of State may issue a residence card to an extended family member not falling within Regulation 7(3) who is not an EEA national, on application, if certain conditions are met. The Secretary of State has a discretion to exercise but has not yet exercised this discretion. All the judge could do was allow the appeal on the basis that the decision was not in accordance with the law and thereafter, having done so, should have remitted the case to the Secretary of State to allow her to exercise her discretion.
8. In the circumstances we propose to allow the appeal to the extent that the matter should be remitted to the Secretary of State in order that her discretion, whatever it is going to be, may be exercised.

LORD MATTHEWS
Sitting as an Upper Tribunal Judge

