



IAC-PE-AW-V1

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

Appeal Number: IA/14951/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12th August and 8th October
2015**

**Decision & Reasons Promulgated
On 18th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MR UMAIR RASHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr Jarvis – Senior Home Office Presenting Officer
Mr Wilding – Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Umair Rasheed, a citizen of Pakistan born 2nd August 1988. He appeals against the decision of the Respondent made on 11th March 2014 to refuse his application for a residence card under the Immigration (European Economic Area) Regulations 2006 (the 2006 Regs) on the basis of his relationship as the unmarried partner of Anna

Kulaswzka, a Polish national born 4th November 1985 who he claimed had been exercising Treaty Rights in the UK as a worker since August 2010.

2. The Appellant appealed against that decision and the appeal was heard on 14th November 2014 by First-tier Tribunal Judge Oliver who dismissed it and set out the reasons for his decision in a determination issued on 8th December 2014. Neither the Appellant nor his partner had appeared at the hearing. Judge Oliver found that there was no explanation for the Appellant's absence but subsequent to the hearing evidence was produced that he had had to go to hospital on the day of the hearing because he had collapsed in a public place. In setting aside the decision of Judge Oliver I said:

'The Appellant did appear at the hearing before me. He confirmed that he had been ill on the day of the hearing. Judge Oliver had made much of the fact that the Appellant's partner did not turn up at the hearing either but she was apparently at the hospital with the Appellant. It was clear from speaking to the Appellant that he had had no legal advice and did not really understand what documents he ought to have provided to the Tribunal. He had previously had leave to remain in the UK as a student but his application for an extension of stay was refused because more than one of his applications had been rejected by the Home Office as invalid. He claimed that at that time he was living with his Polish partner and did not understand that he could make an application on the basis of her residence in the UK.

Given that Mr Kandola confirmed that he had no objection to this case being reheard I set aside the decision of the First-tier Tribunal on the basis that the Judge ought in all the circumstances to have granted an adjournment. I did consider remitting this case to the First-tier Tribunal but I do not think it is appropriate because the Judge did consider the evidence that was before him and found it seriously wanting. Judge Oliver was justified too in taking account of the fact that the Tribunal had not been advised that the Appellant would not be attending.'

3. Judge Oliver took the view that the absence of the Appellant and his partner was deliberate and designed, as he said, to "put off the judgment". Judge Oliver noted that the couple had said that they were going to marry but had not done so. They had provided no answer to the reasons for refusal and no evidence to substantiate their claim to be in a durable relationship. The reasons given for refusing the application by the Secretary of State were that insufficient evidence of the Sponsor's identity had been submitted; insufficient documentation had been submitted to suggest that they were in a durable relationship; there was no evidence of the actual relationship in the form of, for example, photographs. The Respondent's system showed that the Sponsor had recently sponsored another non-EEA national and claimed to be in a durable relationship with that person. The Appellant had provided a bank statement showing a transaction from a person with a different name from his claimed partner and with the reference "Girlfriend" by it suggesting that he might be in a relationship with somebody completely different.

4. The reason given by the Appellant for not having submitted original documents was that they were needed for their marriage which they were planning. His partner had needed her own documents to go to Poland where her mother had been diagnosed with cancer. They had been in a durable relationship since February 2012. The person mentioned as "Girlfriend" was his cousin and the reference was a joke.
5. The rehearing of the appeal first came before me on 12th August 2015. The Appellant attended. Mr Jarvis was representing the Home Office. The Appellant produced a handwritten note from the Sponsor, Anna Kulaszwzka, apologising for not attending that day. She said she had just got a new job round the corner from Field House and had asked for the day off to attend the hearing but this was refused. She had been threatened with dismissal if she left to attend the hearing. Her mother has cancer. She has had to go home to help with her care. She had submitted photographs to show that she and the Appellant are in a genuine relationship. He gets money from his father in Pakistan. She said the Appellant is very stressed by the situation and suggested they go to Pakistan but she does not want to do that. She said they were about to get married but then she heard he was cheating on her so she decided not to go ahead with the marriage. They have now been together for more than three years and she wants him to be with her. She said she would try to call the Tribunal during the hearing but she is part of the catering staff and is not allowed to make a phone call.
6. I talked to the Appellant at length at the hearing on 12th August. He confirmed that he is living with Anna at the address he gave. She had provided a P60 for the period up to April 2015 on which her address was different. He said that that was an old address. She had just not told her employers of the change. He had produced photos and was asked where they were taken. He said they were taken at Gretna Green. It seems that they had gone to Gretna to get married and had been taken in for an interview by Immigration Officers who were there. The Appellant said that the interview took three hours and the Interviewing Officer accepted that he and Anna were in a genuine relationship. He said they started living together in July 2013 but they were together before that when she lived in Romford. In August 2013 he took a flat in Ilford. She had provided a contract confirming her job. He said they could not get married because his passport was with the Home Office. Mr Jarvis appeared to know nothing about the interview at Gretna.
7. The Appellant had told me that Anna had intended to come to court that morning but her boss would not let her come. He said his father was very ill in Pakistan with heart problems and he needed his passport back so that he could go and visit him. He appeared to very distressed and was adamant that he was fed up with the whole situation and wanted to go back to Pakistan see his father. He said that he was really disappointed that Anna had not come to give evidence. Because of the state the Appellant was in I said I would give him the opportunity to get Anna to the court to confirm their relationship. The case was therefore adjourned.

8. On 8th October the Appellant turned up late in the morning at 10.50. He was alone. Anna Kulaswzka was not there. She did not attend. He confirmed that there had been some discussion about getting representation but he had not got any. He said that he and Anna are still in a relationship and have been for more than three years.
9. The position of both Mr Jarvis and Mr Wilding was that there was no evidence that the Appellant and Anna were in a relationship. This was the third hearing and the Sponsor had not once turned up. The Appellant had had numerous opportunities to establish a genuine relationship.
10. I have given careful consideration to all the evidence put before me in this case. I accept that the Appellant and Anna Kulaswzka know each other but the fact of the matter is that just as there was no information or evidence before Judge Oliver to show that they were in a durable relationship there is no such evidence before me. I really gave the Appellant the benefit of the doubt in August when I agreed to adjourn the case so that Anna could try to find a way of coming to give evidence. There is no satisfactory evidence that he is in a durable relationship with Anna even if there is some evidence that she is working in the UK and there was no satisfactory explanation for her failure to turn up at the hearing on 8th October. The issue of Anna's previous sponsorship of a different man is unexplained and I think it highly unlikely that she would not have intimated her change of address to her employer. I take account too of the fact that the Appellant at the first hearing was apparently distressed about the illness of his father and was adamant that he wanted to go home to Pakistan but there was no mention of this at the second hearing.
11. I am not satisfied that the Appellant has established that he and Ms Kulaswzka are in a subsisting and durable relationship such as would entitle him to a Residence Card. No submissions were made under Article 8 ECHR but the fact is that the Appellant has only been in the UK since May 2011 and came as a student with no expectation of being allowed to develop a private life in the UK on completion of his studies. There is no evidence of a family life.

Notice of Decision

The decision of the First Tier Tribunal having been set aside is replaced with this decision.

The appeal is dismissed.

No anonymity direction is made.

Signed

Date: 1st December 2015

N A Baird

Deputy Judge of the Upper Tribunal