



IAC-FH-AR-V1

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

Appeal Number: IA/22869/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th February 2016**

**Decision & Reasons
Promulgated
On 12th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**SOFIAN FERRARD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Algeria born on 31st March 1969. He first arrived in the UK in May 1997 when he applied for asylum unsuccessfully. The Appellant did not leave the UK, and in July 2013 he again applied

unsuccessfully for asylum. On 7th March 2014 the Appellant applied for a residence card as the unmarried partner of an EEA national, namely Jardimil Borges Telma Maria, a Portuguese citizen. That application was refused for the reasons given in the Respondent's letter of 1st May 2014. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Bird (the Judge) sitting at Taylor House on 11th February 2015. She allowed the appeal for the reasons given in her Decision dated 17th March 2015. The Respondent sought leave to appeal that decision, and on 30th July 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The original application of the Appellant was refused under the provisions of Regulation 17(1)(a) and (b) of the Immigration (European Economic Area) Regulations 2006 (the Regulations). This was because the Appellant had failed to produce with his application a valid passport as evidence of his identity as a non-EEA citizen, and also a valid passport or identity card establishing that his partner was an EEA national. The Judge allowed the appeal on the basis that the Respondent's decision was not in accordance with the law because the Respondent had considered the application under the wrong provision and had not dealt with it under Regulation 17(4) of the Regulations.
4. At the hearing, Mr Clarke argued that in coming to that conclusion the Judge had erred in law. Indeed, the Judge should not have heard the appeal as according to Regulation 26(2A) of the Regulations an Appellant could only appeal if he had produced his passport which this Appellant had failed to do.
5. There was no counter-argument for me to consider. At the hearing, there was no appearance by or on behalf of the Appellant. The Appellant had not lodged a Rule 24 response. I decided to hear the appeal in the absence of the Appellant under the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the Appellant had been properly notified of the time, date and place of the hearing and I was satisfied that it was in the interest of justice to proceed to hear the appeal. There was no explanation for the absence of the Appellant.
6. I find there was an error of law in the decision of the Judge which I set aside. It is not in dispute that at no time did the Appellant produce a valid passport for himself. Therefore he did not have a right of appeal under Regulation 26(2A) in which event instead of allowing the appeal the Judge should have found that there was no valid appeal before her.

Remade Decision

7. I then proceeded to remake the decision of the Judge. As there was no valid appeal before me for the reasons given above, I dismissed the purported appeal.

Decision

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by dismissing it.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed

Date: 30th March 2016

Deputy Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my decision to remake the decision in the appeal by dismissing it, I make no fee award.

Signed

Date: 30th March 2016

Deputy Upper Tribunal Judge Renton