



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06064/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 September 2019

Decision & Reasons Promulgated  
On 16 September 2019

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR ZARDASHT QADIRI ALI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Ali of Aaron & Ace Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 24 April 2019 of First-tier Tribunal Judge Eldridge which refused the appellant's appeal against the refusal of an EEA residence card showing him to be the extended family member of an EEA national exercising Treaty rights.
2. The issue before the First-tier Tribunal was a narrow one. The decision of the First-tier Tribunal indicates in paragraph 11 that the respondent accepted that the appellant was in a genuine and subsisting relationship with his EEA national partner

and that the partner was a qualified person for the purposes of the EEA Regulations 2016. The judge goes in paragraph 11 to specify the limited issue still in dispute before him:

“The whole of the appeal turned upon the circumstances of the agreed non-production of a passport or an identity card that was valid within the terms of the Regulations”.

3. In order to address this question reference was made to Regulation 42 of the EEA Regulations 2016 which states as follows:

“Where a provision of these Regulations requires a person to hold or produce a valid national identity card issued by an EEA State or a valid passport, the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person’s control”.

4. In paragraph 26 of the decision the First-tier Tribunal Judge found:

“I accept that the Appellant may well not be in a position to produce any of the other documents that are said will suffice - his birth certificate, military service card, Iranian national card or an expired Iranian passport but there is no evidence that he has tendered any document issued from within the UK and, in particular, any refusal letter from the Home Office. In these circumstances I am not satisfied that he has been unable to obtain and provide a passport for reasons beyond his control”.

5. The judge therefore concluded that the applicant had not shown that the respondent should have accepted alternative documentary evidence in line with Regulation 42 and refused the appeal.

6. The appellant’s evidence, accepted by the First-tier Tribunal in paragraphs 24 and 25 of the decision, was that he had approached the Iranian authorities at the Embassy in London but was not provided with the documents that he sought. His solicitors then wrote to the Iranian authorities requesting clarification of what was required for the appellant to obtain an Iranian identity document that would satisfy the respondent for the purposes of the application for an EEA residence card. The response from the Iranian authorities is set out on page 17 of the respondent’s bundle. It comprises a letter “To Whom It May Concern” and is stated to address “Passport or ETD requirement for any Iranian national at the embassy”. The letter goes on to state as follows:

“The following documents is necessary to obtain passport or Travel document from Iranian Embassy.

Original Iranian Birth Certificate.

Original military service card.

Original Iranian national card.

Original expired Iranian passport.

Original residency status in the UK (any visa or Home Office refusal letter).


Certified copies of the abovementioned documents via Iran Ministry of Foreign Affairs is acceptable.

In order to issue an emergency ETD at least one of the abovementioned Iranian documents is required”.

7. The appellant challenged the decision of the First-tier Tribunal as he maintains that the judge misunderstood the letter from the Iranian authorities. He argues that the letter indicates that in order to obtain a passport, all of the documents listed had to be provided. It was not sufficient for him to present only a refusal letter of an application from the Home Office to obtain a passport. The judge had accepted that he could not provide all of the required documents for reasons outside his control so he should have been given the benefit of Regulation 42 by the respondent.
8. At the hearing before me, Mr Bramble conceded for the respondent that the First-tier Tribunal judge had erred in his reading of the letter from the Iranian Embassy and that the decision had to be set aside for this reason. He also conceded that the Home Office had accepted the appellant to be an Iranian national in his asylum claim and that the First-tier Tribunal which heard his asylum appeal had also found him to be Iranian. Following the decision of First-tier Tribunal Eldridge in paragraph 26, it was accepted that the appellant’s inability to provide an identity document showing this to be so was due to circumstances beyond his control. In those circumstances, the appeal should be re-made as allowed where the respondent had not applied Regulation 42 correctly.
9. Mr Bramble’s concessions confirmed my own view of the decision of the First-tier Tribunal, the grounds of appeal and the disposal of the re-making of the appeal. For the reasons set out above, I found an error of law in the decision of the First-tier Tribunal, set it aside, and re-made the appeal as allowed as the respondent should have accepted alternative evidence of the appellant’s identity and nationality following Regulation 42.

### **Notice of Decision**

10. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made.
11. The appeal is re-made as allowed.

Signed   
Upper Tribunal Judge Pitt

Date: 9 September 2019