



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

Appeal Number: EA/01669/2019

THE IMMIGRATION ACTS

Heard remotely via Skype for Business

Decision & Reasons

On 5 March 2021

Promulgated

On 10 March 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

KHURAM SHEZAD KHAN

Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a male citizen of Pakistan who was born on 16 January 1993, appeals against a decision of the First-tier Tribunal (Judge Siddiqi) promulgated on 18 August 2019. The First-tier Tribunal had dismissed his appeal against a decision of the Secretary of State dated 27 March 2019 refusing the appellant a residence card as confirmation of a right of residence under European Community Law. The appellant now appeals, with permission, to the Upper Tribunal.
2. The basis of the appeal to the Upper Tribunal concerns the judge's findings [19] regarding the question as to whether the appellant had transferred the centre of his life to the host member state (Cyprus). The parties agree that this part of the analysis is at odds with the decision in *ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan* [2019] UKUT 281 (IAC) in which the Upper Tribunal found at [75] (viii) that 'the requirement to have transferred the centre of one's life to the host member state is not a requirement of EU law, nor is it endorsed by the CJEU.' In her Rule 24 notice dated 10 November 2020, the Secretary of State acknowledges that the First-tier Tribunal erred in law but submits that that acknowledgement should lead the Upper Tribunal to remake the decision allowing the appeal. The judge had found problems in the evidence of the appellant which were materially relevant to the application of Regulation 9(2) of the Immigration (EEA) Regulations 2016. Mr Bates, who appeared for the Secretary of State at the initial hearing in the Upper Tribunal, went further and, disagreeing with the conclusion of the Rule 24 response, submitted that any error of law was immaterial. He submitted that, notwithstanding her findings regarding the transference of the 'centre of life', the judge had also found that the purpose of the appellant and sponsor's residence in Cyprus had been to circumvent the Immigration Rules [18(f)].
3. The judge has, at [18], made a series of clear findings which cast significant doubt on the conduct of the appellant and sponsor. The problem, however, is that she has equally clearly found at [15] and [16] there is 'nothing to suggest that [the appellant and sponsor's] residence [in Cyprus] was not genuine.' Following that finding, the judge at [16] states that 'I consider Regulation 9(2)(b) and (c) are met.' At [17], she sets out her concerns regarding the credibility of the appellant and sponsor's evidence making reference to many of the 'genuineness' factors detailed in Regulation 9(3). The outcome of her assessment of the evidence leads her to the conclusion at [18(f)] which I have detailed above. That conclusion directly contradicts the judge's finding that the couple's residence was genuine. As the Rule 24 statement states, the judge has found that Regulation 9(2) (b) and (c) have been met and then uses an analysis of the 9(3) factors which are intended inform the assessment of the genuineness of residence to conclude that the residence is not, after all, genuine at all. At no point in her decision does the judge address this obvious contradiction. The resulting lack of clarity leads me to conclude that the decision should be set aside. I find that the findings at [17] *et seq* are vitiated by the error of law and should also be set aside.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (**not Judge Siddiqi; first available date at Manchester; First-tier Tribunal to decide if face to face or remote hearing; Urdu interpreter**).

Signed

Date 9 March 2021

Upper Tribunal Judge Lane