



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34050/ 2013

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> February 2014

Determination Promulgated  
On 19<sup>th</sup> February 2014  
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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR BEKZOD ABIDOV

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not Present or Represented  
For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Batiste) by which, in a determination promulgated on 18th December 2013, he dismissed the Appellant's appeal against the Secretary of State's decision to refuse to issue him with a residence card as the family member of an EEA national.

2. The First-tier Tribunal determined the case on the papers, the Appellant having paid the fee for and opted for an appeal on the papers. The Judge in paragraph 1 referred to the decision as being made under Regulation 17 of the EEA regulations and at paragraph 2 referred to Regulation 15 of the EEA regulations. At paragraph 4 the Judge noted that the Secretary of State was not satisfied that the Appellant was the family member of an EEA national as claimed and the id card purporting to be that of the Sponsor and submitted with the application had been reported lost or stolen and was therefore not reliable evidence.
3. The Judge referred to having before him bundles provided by both sides. At paragraph 6 he made findings with regard to the purported stolen identity card. He noted that it was suggested that the identity card relied upon to establish the nationality of the Sponsor had been reported lost or stolen and he noted that that was not disputed by the Appellant. He noted that it was claimed in the Sponsor's witness statement that she had sent that document in with the claim but then because she had needed urgent travel documents to go Lithuania, she approached the Lithuanian Embassy for a replacement and was told the only way to obtain one was to cancel the existing one which she did.
4. The judge considered that explanation and remarked that he did not have the benefit of hearing live evidence from the Sponsor or the Appellant. He had no explanation as to why a document reported to be missing was nevertheless able to be submitted with the application. He noted that the Sponsor would have had a passport to enable her travel to the UK and therefore should have been able to provide alternative identification even if an identification card had been cancelled/lost/stolen. The Judge indicated on the basis of the evidence before him that he could not be satisfied as to the authenticity of the account given the serious matters raised and thus could not be satisfied that the Appellant was in truth the family member (spouse) of an EEA national as claimed. The Judge also noted at paragraph 9, although he indicated it was not determinative of the appeal that there was very little evidence to support the suggestion that the Sponsor and Appellant were in an existing relationship or how long they had been so.
5. Lastly, the judge noted that an argument in relation to Article 8 had been raised but also noted that the decision to refuse to issue a residence card did not give rise to any interference with Article 8 and should a decision be made at some point to remove the Appellant from the UK, Article 8 could then be argued. It is also the case that the Appellant had made no Human Rights claim, a necessary prerequisite to arguing it on appeal from within the UK.
6. In seeking permission to appeal the Appellant's representatives argued that the Judge had erred by applying Regulation 15 (the Regulation dealing with permanent residence) as opposed to Regulation 7 (the Regulation dealing with the issue of a residence card). It was asserted that the Judge applied the wrong standard of proof namely a balance of probabilities and that he had given weight to immaterial matters, namely the relationship between the Appellant and Sponsor which had not

been put into question. It was also argued in the grounds that the Appellant's Article 8 rights had not been properly assessed.

7. Granting permission to appeal, the First-tier Tribunal Judge agreed that it was arguable that the Judge erred in addressing Regulation 15 as opposed to Regulation 7 and that it was also arguable that the Judge erred in putting into question the relationship between the Sponsor and Appellant and in failing to deal with Article 8.
8. The Appellant and Sponsor chose not to have an oral hearing. They were represented and presumably therefore advised. They chose not to attend or be represented at the hearing before me either. I did have written submissions from the representatives. However, those submissions amount to no more than a restatement of the initial grounds relying particularly on the Judge's looking at Regulation 15 rather than Regulation 7.
9. The major reason for this application being refused by the Secretary of State and the appeal being dismissed by the First-tier Tribunal Judge was the fact that an identity document purporting to belong to the Sponsor and submitted with the application had been reported to be lost or stolen. That is the major reason for the refusal and therefore in that regard it matters not which regulation of the EEA Regulations is being considered. The judge was entitled, in the absence of oral evidence to find that there was no credible explanation for the use of that document. In particular, if the Sponsor had to cancel her identity document in order to obtain another then she would not have had the one reported lost or stolen to submit. Furthermore, it is said that the Sponsor cancelled the identity document; which is not the same as it being reported lost or stolen.
10. On the highly unsatisfactory and limited evidence before the Judge the outcome of the Appellant's appeal was inevitable. On the basis of the Judge's findings in relation to the use of a lost or stolen id card and in the absence of evidence of any real relationship, I cannot find that the judge erred in failing to deal with Article 8. In any event, as the Judge indicated, refusal to issue a residence card cannot represent a breach of Article 8.
11. The burden of proof reset with an Appellant to show that he meets the requirements of the EEA Regulations and in this case he had not done so.
12. The Judge in this case reached the only conclusion possible on the basis of the very limited evidence. There is no error of law material to the outcome and the appeal to the Upper Tribunal is therefore dismissed.

Signed

Date 17<sup>th</sup> February 2014

Upper Tribunal Judge Martin