



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

Appeal Number: IA/19104/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Determination & Reasons  
Centre Promulgated  
On 8<sup>th</sup> September 2017 On 19th September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR EJAZ HUSSAIN  
(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 A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Pooler, promulgated on 15<sup>th</sup> June 2016, following a hearing at Stoke-on-Trent on 14<sup>th</sup> June 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied

for, and was granted, permission to appeal to the Upper Tribunal, and thus the matters comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 13<sup>th</sup> May 1987. He appealed against the decision of the Respondent dated 30<sup>th</sup> April 2015 refusing to issue the Appellant with a residence card as a confirmation of his right of residence as a family member of an EEA national.

### **The Determination**

3. The judge's determination shows that the Appellant did not give any evidence at the hearing and was not subjected to any cross-examination (paragraph 8). It also shows that the Appellant's representative did not seek to persuade the judge that he should consider the issue whether the Appellant's wife was a qualified person at any time other than the date of the hearing. The judge also noted that it was "acknowledged" that the Appellant's bundle of documents did not include any evidence of the employment of the Appellant's wife later than May 2015". On that basis, the judge held that he could not be satisfied "that the wife continued to be a qualified person and thus that requirement of the Regulations was not met" (paragraph 8). Whilst recognising that there was much unsatisfactory evidence on the part of the Respondent Secretary of State, including the lack of an interview record, (paragraph 18) and whilst concluding in the Appellant's favour that he had not engaged in a marriage of convenience with his Bulgarian wife, (paragraph 23), the judge nevertheless concluded that the appeal on EEA grounds had to be dismissed.

### **The Grant of Permission to Appeal**

4. On 6<sup>th</sup> March 2017, the First-tier Tribunal dismissed the application by the Appellant to appeal, whereupon the Grounds of Appeal were renewed to the Upper Tribunal, with it being argued that this was not an out of time application because there had been an error on the part of the Respondent in serving the decision at the right address, whereupon on 11<sup>th</sup> July 2017, UTJ Pitt, purported to grant permission to appeal. The Rules 24 response that then followed that grant of permission, which is dated 4<sup>th</sup> August 2017, makes it clear that Judge Pitt's reasons for granting permission were anything but that, given that, what she intended to do was to actually refuse to grant permission. Judge Pitt gave her reasons on the substantive issue (at paragraph 4) and stated, "in any event, the application would have been refused. The substantive grounds challenged the finding at [9] that there was no evidence that the spouse had worked from 2015 onwards. None of the materials on which the Appellant seeks to rely show otherwise. The Grounds of Appeal cannot show legal error in the decision of the FTTJ therefore." (See paragraph 5 of the Rule 24 response).

## **The Hearing**

5. At the hearing before me the Appellant was not represented, and did not appear, and there was no explanation given for either. The Respondent was represented by Mr A McVeety, a Senior Home Office Presenting Officer, and he submitted that it was plain from the decision of UTJ Pitt on 11<sup>th</sup> July 2017, that what she purported to do was to actually refuse permission to appeal. There were two issues. The first was whether the decision of Judge Pooler had been sent to the correct address. The judge had stated (at paragraph 3) that, “contrary to the suggestion in the grounds, the Tribunal file shows that on 15<sup>th</sup> June 2016 the decision of FTTJ Pooler was sent to the Appellant at his new address of 4 Western Lane”. UTJ Pitt then goes on to say (at paragraph 4) that,

“In any event, the application would have been refused. The substantive grounds challenging the finding [at 9] that there was no evidence that the spouse had worked from 2015 onwards. None of the materials on which the Appellant seeks to rely show otherwise”.

## **No Error of Law**

6. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007 such that I should set aside the decision and remake the decision. It is plain that what UTJ Pitt purported to state was that “the application is refused”, rather than “granted” and the four reasoned paragraphs in her decision suggests exactly that. This kind of error, though regrettable, is not infrequent, and it in no way suggests that permission to appeal had been granted. In any event, the Appellant has not appeared and has not been represented and there is still nothing before this Tribunal to show that the Appellant’s Bulgarian wife did indeed work later than May 2015. That was the position before Judge Pooler and it is the position before this Tribunal. The appeal did not succeed, and it could not have succeeded and it would not succeed before this Tribunal. There has simply not been an error of law at any stage.

## **Notice of Decision**

7. There is no material error of law in the original judge’s decision. The determination shall stand.
8. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

18<sup>th</sup> September 2017