



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

Appeal Number: EA/08167/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision by Consent and Directions
Promulgated**

On 15th November 2018

On 30th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**RAJA USMAN BASHIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel

For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION BY CONSENT AND DIRECTIONS

1. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:

- (i) Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 17th August 2018 discloses a material error of law, it is hereby ordered by consent as follows.
- (ii) The First-tier Tribunal Judge made errors of law in the manner described in the grounds of appeal and as pleaded by Appellant's Counsel in the following respects:

It was agreed between the parties that the key issue at stake before the First-tier Tribunal and which was the subject of the application was whether the Appellant was able to meet Regulation 10(5)(d)(iv) of the Immigration (EEA) Regulations 2016 in relation to whether he had retained a right of residence in the United Kingdom which was warranted by "particularly difficult circumstances, such as ... domestic violence whilst the marriage or civil partnership was subsisting". In this regard Counsel for the Appellant directed my attention to paragraphs 4, 5, 10, 12 and 15.a. of the Appellant's witness statement which referred to the issue of domestic violence. Mr Wilding accepted that this issue had not been determined and it was the backbone of the application, as he put it. There was some brief discussion as to whether that error may be immaterial in respect of the further issue raised in the refusal letter in terms of the identity of the Sponsor not being established by virtue of a provision of the former EEA Sponsor's passport or valid identity document, however my attention was directed briefly to Regulation 42 of the 2016 EEA Regulations which provides that alternative evidence of identity and nationality can be produced and that "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". Alongside this Regulation there is also guidance published by the Secretary of State entitled "Free movement rights: retained rights of residence Version 3.0" published on 7th February 2017 and still in force (as far as I am aware) which states on page 21 that where it is agreed that additional enquiries can be made the applicant must give as much detail as they can about the EEA national Sponsor and if they cannot "provide proof of the EEA national Sponsor's identity, nationality or proof of relationship, then you must check existing records on CID to see if their identity has been established in any previous applications". I am told by the parties that the Sponsor had previously provided a copy of her valid identity and therefore there may be a copy of an existing record on CID but which Mr Wilding did not have any further information at present, but did not refute that there would not be a record on CID equally. Therefore in that light, given that the key complaint reveals an error which is material by virtue of the fact that the further issue regarding the identity of the EEA Sponsor may be in fact established by virtue of the CID notes which the Respondent may have in his possession, the above agreed errors in the decision reveal material errors of law such that the decision should be set aside.

2. As a consequence of the above agreed errors, the decision is hereby set aside in its entirety and is remitted to be heard by a differently constituted bench.
3. The Appellant's appeal to the Upper Tribunal is therefore allowed.
4. The decision of the First-tier Tribunal is set aside for legal error by consent.

Directions

5. I make the following directions for the continuation and remitted hearing that is to shortly follow before the First-tier Tribunal:
 - (1) The appeal is to be remitted to Hatton Cross.
 - (2) No interpreter is required. One witness is to be called according to Counsel's instructions.
 - (3) The time estimate given is two hours.
 - (4) No special directions have been requested.
 - (5) I do not make any anonymity direction as my decision does not disclose, or require me to discuss, the identity or interests of any children.

Signed

Date

Deputy Upper Tribunal Judge Saini

25 November 2018