



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: IA/25435/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 November 2014**

**Determination**

**Promulgated**

**On 18 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**MR MIAN MUHAMMAD SALMAN  
ANONYMITY DIRECTION NOT MADE**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr C Wilding, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan, born on 3 August 1989. He appeals against the decision of First-tier Tribunal Judge Grimmett (the Judge), who dismissed his appeal against the refusal by the Respondent to issue a residence card as confirmation of his right to reside in the UK on the basis that he

is a family member of an EEA national. She noted in her determination that it is stated in the decision notice that the Appellant's EEA national Sponsor had failed to provide evidence that she was a qualified person as provided in Regulation 6 of the Immigration (European Economic Area) Regulations 2006. She also noted that in his notice of appeal, the Appellant stated that he intended to send in detailed grounds of appeal, an appeal bundle and a witness statement at a later stage, none of which were provided when she heard the appeal on 12 August 2014. In the absence of evidence, the Judge found that the Appellant had not satisfied the burden of proof and she dismissed his appeal.

2. Although the grounds of application span 5 pages, the complaint of the Appellant, who is unrepresented, is that he had gone to his immigration consultant (the representative) who had taken statements from him and his wife, that the representative had made a bundle of documents which they signed and he left them with the representative to send to the First-tier Tribunal. After he received the determination of the Judge, he had gone to his representative who had admitted that he had put the Appellant's documents into a drawer and forgotten to submit them in a timely manner and the documents were in fact only submitted a few days ago. He stated that the lawyer had promised to work for him for another appeal for free. Permission was granted by Judge Grant-Hutchinson on the basis that it is arguable that evidence which had not been lodged through no fault of the Appellant may have made a material difference to the outcome or to the fairness of the proceedings.
3. The Appellant did not attend the hearing before me, despite notice of hearing having been sent to him at his last known address on 30 October 2014.
4. The Respondent submitted a Rule 24 response, opposing the application because, as summarised by the First-tier Judge Grant-Hutchinson (who granted permission to appeal), the grounds did not demonstrate that the Judge had erred in law. It was therefore open to the Appellant to make another application for a residence card with appropriate evidence. It is also asserted in the response that 'Unsupported assertions about the activities of a firm of unnamed immigration consultants do not establish the material facts.'

### **Decision and reasons**

5. I can only set aside the Judge's decision if I find that she has materially erred in law. A judge can have materially erred in law if he committed or allowed a procedural irregularity to occur

which resulted in an unfair hearing or which materially affected the outcome of the appeal. However, although the Appellant states that he saw his representative and he was told that the papers had only been sent a few days ago, this does not establish when the papers were in fact sent to the Tribunal. The Judge's appeal was promulgated on 8 September 2014. The documents sent in by the Appellant were date stamped received by the Tribunal on 10 September 2014. The Judge cannot be said to have erred in law for failing to consider evidence that was not provided to her.

6. Although permission was granted on the basis that the failure to submit evidence was not the fault of the Appellant, no evidence was supplied from the representative to support the assertions made by the Appellant in his grounds of application. There is also no evidence that the Appellant made any complaint to the claimed representative's governing body. Whilst I appreciate that the Appellant is unrepresented, alleging that representatives were to blame for the failure to file evidence, is a serious allegation and must be supported by evidence. As noted in the Rule 24 response, the Appellant does not even name his alleged representative. In the circumstances, I am not satisfied that the Appellant has established that he was let down by his representative. Furthermore, even if the Appellant was let down by his representative, this does not mean that the Judge materially erred in law and I can only set aside her decision if there was such an error on her part. The appropriate course of action is for the Appellant to submit a new application for leave to remain with appropriate supporting evidence.
7. Having read the grounds of application and the determination, I am satisfied that the Judge did not materially err in law.

### **Decision**

8. The determination of Judge Grimmett contains no material errors of law and her decision must therefore stand. The Appellant's appeal is dismissed.
9. An anonymity direction was not made by the First-tier Tribunal and on the facts of this case, I see no reason why an order should be made pursuant to Rule 13 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed  
**2014**

Date **18 December**

M Robertson  
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT  
FEE AWARD

Judge Grimmett made no fee award because she dismissed the Appellant's appeal. As her decision is upheld, so too is her decision as to the fee award.

Signed  
**2014**

Dated **18 December**

M Robertson  
Sitting as Deputy Judge of the Upper Tribunal