



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

Appeal Number: IA/27837/2014

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 25<sup>th</sup> November 2015**

**Determination Promulgated  
On 4<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MR UMAIR BENJAMIN**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr D. Clarke (Home Office presenting officer)

**DECISION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in the decision promulgated by the First-tier Tribunal (Judge Sullivan) on 13<sup>th</sup> March 2015 in which the Tribunal dismissed the EEA appeal on immigration and human rights grounds.
2. The appellant did not attend for the hearing before me and there was no communication from him giving any explanation for his absence or seeking any adjournment. I was satisfied that he had been duly sent the notification of the date and time of the hearing at his last known

address. I decided to hear the appeal in the absence of the appellant following Rules 2 and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

### **Background**

3. The appellant is a citizen of Pakistan. He appealed against the refusal of his application for a residence permit as the extended family member of an EEA national. The respondent relied on a deception made by the appellant in a previous application made in 2012 under Tier 1, for which there was no right of appeal and the lack of evidence to show any connection between the appellant and his partner. The appellant did not attend for the First-tier Tribunal hearing. The Tribunal refused an application to adjourn made on behalf of the appellant by his representative. The Tribunal proceeded to determine the appeal in the absence of the appellant and his representative, who had withdrawn. The Tribunal was not satisfied that the evidence established that the appellant was so ill that he was unable to attend the hearing and the appeal was put back to the afternoon to allow the appellant to attend [8-12]
4. In considering the substantive issue the Tribunal found that there was little evidence to show that the appellant was in a relationship with an EEA national [20 -26]. The Tribunal found that the respondent failed to produce sufficient evidence of any deception and/or evidence to show that the appellant was not in occupation of his claimed address. (The appellant complained extensively in his grounds of appeal that the respondent had relied on the deception, but in fact this was not a material issue as the Tribunal rejected the respondent's evidence.)
5. The Tribunal took into account that the appellant's partner had not attended for the hearing and there was no oral or documentary evidence to show they were a couple. [26]
6. The Tribunal considered Article 8 both inside and outwith the Immigration rules [27 -29]. Aside from residence in the UK for just over 3 years, there was no evidence to show that Article 8 was engaged.

### **Grounds for permission**

7. The appellant argued that the Tribunal erred in refusing the adjournment made on medical grounds.
8. The Tribunal failed to deal with the Article 8 claim.
9. Permission to appeal was granted by DUTJ Archer. It was arguable that the Tribunal failed to properly consider Article 8. There was no arguable error of law in the Tribunal's decision to refuse to grant an adjournment.

**Rule 24 response**

10. The respondent opposed the appeal. There was no complaint raised as to the substantive findings and decision, which should stand. The Tribunal considered family life and there was no evidence of any private life for the Tribunal to consider.

**Submissions**

11. Mr Clarke relied on **Amirteymour & ors (EEA appeals; human rights) [2015] UKUT 00466 (IAC)**. He submitted that the Tribunal was under no obligation to consider Article 8 in the circumstances where there was no section 120 Notice served and no EEA removal decision made.

**Discussion and conclusion**

12. I concur with the submissions made by Mr Clarke and as set out in the Rule 24 response. The appellant was precluded from bringing a human rights challenge in the absence of a section 120 Notice or where no EEA removal decision is made. In any event I am satisfied that the Tribunal did in fact consider Article 8 issues adequately with reference to the limited evidence that was before it.

**Decision**

13. There is no material error of law disclosed in the decision which shall stand.

The appeal is dismissed.

Signed

Date 26.11.2015

GA Black

NO ANONYMITY ORDER MADE

TO THE RESPONDENT

NO FEE AWARD MADE AS THE APPEAL WAS DISMISSED.

Signed

Date 26.11.2015

GA Black