



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

Appeal Number: IA/03495/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 15 July 2014**

**Determination  
Promulgated  
On 20 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**NAVID AHMAD**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Navid Ahmad, is a citizen of Pakistan and he was born on 16 March 1986. He appeals against a refusal of the respondent to grant him an EEA residence card as confirmation of a right to reside in the United Kingdom as the extended family member of a qualified EEA national. The immigration decision was taken on 31 December 2013. The

appellant's appeal against that decision to the First-tier Tribunal (Judge Reed) was dismissed in a determination promulgated on 8 April 2014.

2. The term "extended family member" is defined in paragraph 18 of the 2006 Regulations. In a detailed analysis of the evidence, Judge Reed found that the appellant had not "demonstrated that he is indeed in a durable relationship with Ms Wloch" [the EEA national]. The appellant therefore did not satisfy the requirements set out in Regulation 8(5) and is not entitled to be considered for the issue of a residence card under Regulation 17(4). I therefore dismiss the appeal under the Community Treaties.
3. In summary the grounds of appeal assert that the judge (i) failed to consider the detailed oral and written evidence of Ms Wloch, the appellant's wife; (ii) improperly applied the *Devaseelan [2002] UKIAT 00702 (Starred)*. It is asserted in the grounds that a previous hearing before a First-tier Tribunal Judge (Judge Atkinson) had led to the dismissal of a similar appeal "for reasons of credibility" [grounds, 3]. After the dismissal of his appeal on that occasion and his failure to persuade the Upper Tribunal that there had been a material error of law, the appellant had simply submitted a new application in September 2013 "addressing the findings of the previous Tribunal and relying upon further additional evidence" [grounds 4]. The appellant asserts that Judge Reed incorrectly followed the principle set out *Devaseelan* because he failed to consider "a large volume of evidence which rebutted the previous findings [of the First-tier Tribunal Judge Atkinson] and explained any gaps ..." [grounds, 10]; (iii) reaching his findings as to the credibility of the appellant's claim to be in a durable relationship with Ms Wloch, the judge had regard to immaterial matters, for example the appellant's failure to give a satisfactory explanation as to why he remained in the United Kingdom at the expiry of his initial leave as a student; (iv) Judge Reed failed to give adequate reasons for finding that the appellant and Ms Wloch are not in a durable relationship.
4. I find that none of the grounds of appeal have merit. The appellant, who appeared without a professional representative before the Upper Tribunal, handed to me some written submissions which I have considered together with all the other documents before the Upper Tribunal. I gave the appellant every opportunity to address me at during and at the conclusion of the appeal hearing.
5. Dealing with the grounds as drafted by the appellant's previous legal representatives which I have summarised above, I find that Judge Reed did indeed take account of the evidence of Ms Wloch. He summarised the evidence of Ms Wloch (given in Polish through an interpreter) at [14] *et seq.* He refers at [11] to the documentary evidence which he considered. There was no need for the judge to set out *in extenso* the evidence of the witness, Ms Wloch. The judge acknowledged Ms Wloch's claims that she and the appellant are in a durable relationship but I find that he has given

very cogent and adequate reasons for concluding that that evidence was not accurate.

6. As regards the application of *Devaseelan* principles, the judge refers to that case at [21] and correctly noted that “the findings of the [previous] Tribunal in relation to the facts existing at that time must be starting point for me ...” The point ignored in the grounds of appeal is that the “new evidence” adduced before Judge Reed “addressing the findings of the previous Tribunal” would have attracted little weight in any event given that it appeared to consist of evidence which could and should have been put before Judge Atkinson in the earlier appeal. Negative credibility findings cannot, as the grounds appear to assume, be simply wiped away in a subsequent appeal, by the submission of additional evidence.
7. As regards the judge’s alleged “over reliance on immaterial matters”, I find that this ground has no merit. It was open to Judge Reed to examine all the evidence before him and conclude that the appellant had still failed to give credible explanations for remaining in the United Kingdom following the expiry of his visa in 2011. That the appellant had been prepared to lie about these matters to Judge Reed, as he had before the previous Tribunal, was clearly pertinent to Judge Reed’s analysis of the evidence. Likewise, the judge was also entitled [23(5)] to attach little weight to the evidence of friends and acquaintances (who would testify as to the nature of the relationship between the appellant and Ms Wloch) because none of those witnesses attended before the Tribunal for their evidence to be tested in cross examination.
8. The assertion in the grounds that the judge has failed to give reasons for his conclusions at [24] has no merit. The judge’s conclusions at [24] are proceeded by very detailed analysis of the evidence and clear and firm findings of fact as to material parts of the appellant’s account. The reasoning is entirely adequate. In particular, the judge’s finding that the appellant was not in a durable relationship with Ms Wloch which was based, in part, on the appellant’s previous dishonesty, his continuing failure to explain parts of his immigration history and inconsistencies in the evidence which he and Ms Wloch provided, was clearly open to the judge.

## **DECISION**

9. This appeal is dismissed.

Signed

Date 18 August 2014

Upper Tribunal Judge Clive Lane