



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

Appeal Number: EA/04759/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast

On 3 April 2019

**Decision & Reasons
Promulgated
On 25 April 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**FAZAL UR REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hollywood, instructed by Andrew Russell & Co
Solicitors

For the Respondent: Mr M Matthews, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He appeals the decision of First-tier Tribunal Judge Gillespie who dismissed his appeal for reasons given in a decision dated 14 February 2018 against the Secretary of State's decision dated 12 April 2016 refusing to issue a permanent residence card.

2. The judge explained at [31] to [35] of his decision after surveying the evidence regarding the EEA national's work pattern and its location:
 - “31. More fundamentally a real issue arises in regard to when and for how long the parties were actually living together, if at all. The appellant made his application with the declared residence of 20 Foxglove Street, Belfast and there are two letters appended with it from the Social Security Agency dated 24 October 2012 and 23 February 2015 to her at this address in regard to Employment and Support Allowance. But in the bundle of documents produced at the hearing other Belfast addresses appear on the Jobseekers Allowance correspondence, namely Templemore Hostel, 7 -9 Upper Frank Street, Belfast and 160 Madrid Street, Belfast.
 32. In his application he said he was living with his sponsor from January 2010 (5.6). He is asked whether he has lived with her at an address other than that given in section 1 (20 Foxglove Street, Belfast) and he states that he lived with her at 49 Graymount Road, Newtownabbey giving the relevant period as 20 January 2010 to 1 July 2010.
 33. The letter from the University of Ulster is written to her in November 2010 at Apt 1 Pypers Field, Comber Road, Dundonald. Most of the Red Sky Group pay advice slips are addressed to her at 1 Pipers Field, Comber Road, Belfast. There are pay advice slips in 2012 from Allied Bakeries to her at 160 Madrid Street, Belfast.
 34. These various addresses raise a real doubt as to whether the parties were ever genuinely residing together, and from early on in their alleged association at that.
 35. I find the appellant comes nowhere near to proving that he is entitled to a Permanent Residence Card under the provisions of the Regulations. The last three of the four constituent elements noted above have not been met.”
3. The grounds of challenge refer to Regulation 14 of the Immigration (EEA) Regulations 2006 with the observation that the appellant had asserted that permanent residence had already acquired by the EEA national prior to the events occurring after April 2011. It is contended that appellant and his spouse were not actually required to demonstrate they resided in the same house in order to succeed and the judge had failed to take into account *PM (EEA - spouse - “residing with”) Turkey [2011] UKUT 89 (IAC)*. The genuine nature of the relationship had never been disputed. In summary it is argued that the First-tier Tribunal Judge had misapplied the law, made inadequate findings on the salient issues and failed to have regard to relevant caselaw.
4. The Secretary of State has served a notice pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 explaining that the application for permission is not opposed. The Tribunal was invited to determine the appeal with a fresh oral continuance hearing to consider whether the appellant has satisfied the requirements for permanent residence.

5. The hearing of this appeal began without Mr Matthews as he had been delayed. In deciding the way forward, I reviewed the evidence with Mr Hollywood during which he clarified that the appellant's wife had commenced employment at Park View Lodge Bed and Breakfast on 23 April 2006. Her WRS registration had been updated as of 2 April 2007 to reflect commencement of her employment at the University of Ulster. The papers in the bundle included a letter from the University of Ulster dated 25 November 2010 confirming her last day of service was 24 October 2010 and the appellant's wife had produced pay slips for her employment with Red Sky from 16 July 2010 until 1 April 2011. The chronology showed that the appellant had moved to Wales in February 2011 and his wife had moved there at the end of April 2011 and had sought work and obtained job seekers allowance.
6. The arrival of Mr Matthews obviated the need for remittal to the First-tier Tribunal or any further fact finding in the Upper Tribunal. After conferring with Mr Hollywood, Mr Matthews accepted that the evidence almost covered a five year period but for a week or two and did not resist a finding that the appellant's wife had achieved a right of permanent residence in April 2011. As a consequence, Mr Mathews accepted that the appellant himself had achieved a comparable right of permanent residence in January 2015. He therefore agreed that the appeal should be allowed.
7. Neither party required me to give detailed reasons for my decision. I consider that Mr Matthews was correct to proceed as he had; the issues were whether the appellant's wife had acquired a right of permanent residence by April 2011 and whether the appellant benefited as a family member. The subsequent difficulties encountered by the couple are not relevant to that enquiry.
8. The decision of the First-tier Tribunal is set aside for error of law. I re-make the decision and allow the appeal against the decision of the Secretary of State refusing to recognise the appellant's status as a permanent resident under the 2006 Regulations.

No anonymity direction is made.

Signed

Date 18 April 2019

UTJ Dawson

Upper Tribunal Judge Dawson