



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002757

First-tier Tribunal No: EA/00189/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ARIF ALI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Absent

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

Heard at Manchester Civil Justice Centre on 6 December 2023

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sweet promulgated on 12/05/2023, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 16/08/1980 and is a national of Pakistan.
4. On 03/12/2022 the respondent refused the appellant's application for an EUSS family permit as the family member of a relevant EEA citizen.
5. The appellant says that he married an EEA citizen on 15/07/2021. The respondent says that the definition of spouse or civil partner is set out in Appendix EU and includes the requirement for the marriage to have been contracted before the specified date, being 31 December 2020, or that the applicant was the durable partner of a relevant EEA citizen before the specified date, and the partnership remained durable at that date. Durable partner being defined as a person who has lived together in a relationship akin to a marriage or civil partnership for at least two years, and the person held a relevant document as the durable partner of a relevant EEA citizen.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. In a decision promulgated on 12 May 2023 First-tier Tribunal Judge Sweet ("the Judge") dismissed the Appellant's appeal.
7. Grounds of appeal were lodged by the appellant, and on 03/11/2023 Upper Tribunal Judge Sheridan gave permission to appeal stating

The decision is arguably procedurally unfair because of a failure to have regard to documents submitted by the appellant. It appears there may have been an administrative error which resulted in the documents not reaching the judge.

The Hearing

8. The appellant was neither present nor represented. I am satisfied that the appellant has had adequate notice of today's hearing and has chosen not to attend. The grounds of appeal are as follows:

1. Regrettably I have received my Appeal Determination and my Appeal was dismissed and the main reason for dismissal as stated by the Judge on Para 3 that "There was no further evidence of a durable relationship of almost four years, as claimed, such as photographs and joint financial commitments." This shows that my bundle of documents consisting of 111 pages was not placed before the Judge. Further he stated at paragraph 4 that "The appellant gave notice of appeal on 2 January 2023 but did not provide any further documents in support of his appeal". That means the Judge did not have my documents for consideration.

2. I can confirm that I have provided my bundle the total pages were 111. My bundle

contained all the documents which said to have been missing from my file before the Judge, as I have provided the evidence for more than 4 years but as noted by the Judge there was no such documents provided.

3. Clearly, the Judge is not convinced with my claim of relationship because he did not have all my supporting documents for consideration. I am unable to understand why my complete bundle was not before the Judge. Even though, my formal bundle was submitted as directed on 17 April 2023. I have attached my complete bundle again with this application and pdf copy of email lodging the bundle. This shows that I had my bundle ready and sent on 17th April 2023, which was not placed before the Judge.

4. It is submitted that my Formal Bundle of documents was not considered which has affected my case severely because most of the important documents were included in this bundle such as our proof of durable relationship. This confirms that my bundle was not before the Judge for consideration. Therefore, it can be concluded that my full case was not considered. I was unable to present my case properly or at all as my supporting documents were not before the Judge for consideration.

5. Moreover, FTT Judge Chohan pointed out that 'there was no bundle received by the Tribunal'. It is submitted that my bundle was ready which I have attached with this application again. Given the fact it was ready why wouldn't I send it specially when it was in my best interest to send. I have confirm that I did send my bundle which went missing. It is not fault that the documents lodging the email failed to reach the Tribunal or it was overlooked. All I could do to provide copy of email lodging the bundle on 17 April 2023 which evidence that the bundle was lodged. I am unable to understand what else I can do to prove that.

6. My bundle was received by the Tribunal but it was not placed before the Judge. However, it was detrimental to my chances of succeeding in my appeal.

7. I thus had no opportunity to put in evidence of my own or participate meaningfully in the appeal.

8. It has affected me by way of depriving me from my rights under EEA regulations.

9. This case raises an important point of procedural error.

10. It is respectfully submitted to the tribunal that my right to free and fair trial was hurdled by not providing the Judge with the bundle. In these circumstances the tribunal is requested to set aside this judgement and provide me with an opportunity to present my case again at FTT.

9. For the respondent, Mr Bates adopted a neutral stance. This appeal could be resolved if the date the appellant's appeal bundle was either sent or received could be established. Mr Bates told me that he had searched for the appellant's bundle and could not find it. He is left with the impression that the First-tier Tribunal have not received the bundle.

10. Mr Bate's told me that the appellant's appeal bindle contains documents dated before 17 April 2023, which is more than three weeks before the First-tier Tribunal hearing and almost 4 weeks before the Judge's decision was promulgated. Mr Bate's candidly conceded that he could not imagine an appellant preparing a bundle for an appeal and not submitting it.

Analysis

11. Mr Bates was extremely fair in his submissions. It is not disputed that the appellant prepared an appeal bundle on or about 17 April 2023, and the First-tier Tribunal hearing took place on 9 May 2023.

12. Even though no trace can be found that the appellant's bundle, the respondent's position goes beyond neutrality. The respondent's position is close to saying that if the appellant prepared a bundle, he must have submitted the bundle. There is almost a concession that administrative error prevented the appellant from having a fair hearing.

13. The Judge's decision proceeds entirely on the basis that the appellant produces no evidence. On the balance of probabilities, the appellant produced a bundle of evidence containing several documents and witness statements. It was not the Judges fault that none of the evidence was considered.

14. Administrative errors have led to the procedural failing. For that reason, the Judge's decision contains a material error of law, and I set it aside.

15. The appellant's evidence has not yet been considered in this case. The appeal will have to be heard of new in the First-tier Tribunal. The appellant must understand that he will have to serve his bundle of documents on the First-tier Tribunal once again when he receives notification of the date of the First-tier Tribunal hearing.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having

regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

18. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Sweet.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision promulgated on 12 May 2023 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed **Paul Doyle**
December 2023
Deputy Upper Tribunal Judge Doyle

Date 18