



**UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

**THE IMMIGRATION ACTS**

Heard at: Birmingham  
On: 20 June 2013

Decision Promulgated  
On: 25

June 2013

Before

**Upper Tribunal Judge Pitt**

**Deputy Upper Tribunal Judge Juss**

Between

**Ion Cursaru**

Appellant

and

**Secretary of State for the Home Department**

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Mr Smart, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

1. The appellant is a citizen of Romania and was born on 13 April 1985.
2. This is an appeal against the decision of First-tier Tribunal Judge Dove QC which dismissed the appellant's appeal against the respondent's decision dated 4 January 2013 which refused a Registration Certificate as the dependent of an EEA Accession Worker.
3. The appellant indicated in his appeal form that he was content for the appeal to be decided on the papers. First-tier Tribunal Judge Dove did so, stating as follows at [2]:

"Unfortunately, for whatever reason, the paperwork comprised in the appeal is (with the exception of material related to dealing with whether or not the appeal had been made out of time) the documentation which was lodged with the appeal. That solely comprises the decision letter, a letter dated 21 January 2013 from the Appellant, and some Halifax Bank statements. I do not have in the papers any of the documentation which pertains to the original application such as the application form itself, the registration certificate for the Sponsor or the Sponsor's pay slips. In the absence of that documentation and material to support necessary requirements of the Immigration (European Economic Area) Regulations 2006, I can only conclude that the Appellant in this case has failed to discharge the burden of proof, since it is necessary for that that (sic) documentation to be before me in order to satisfy relevant requirements. Thus, the appeal must be dismissed as on the material before me the requirements of the Regulations have not been met, albeit that that (sic) is a decision which I am driven to without detailed consideration of the merits but simply on the basis of incomplete information having found its way to the appeal file. In those circumstances this appeal must be dismissed."

4. The appellant's ground of appeal was simply that the respondent was responsible for providing the evidence that had been submitted in support of the application and that it was not open to the First-tier Tribunal to proceed on the basis that he had not made out his case where that documentation was not on the file.
5. Mr Smart sensibly conceded that a material error of law arose for the reasons set out by the appellant in the grounds of appeal. Rule 13 (1) of The Asylum and Immigration Tribunal (Procedure) Rules 2005 stipulates that the respondent "*must*" file with the Tribunal documents referred to in the notice of decision. The notice of decision in this case referred to an application and bank statements.

The respondent was responsible for providing these documents to Tribunal, not the appellant. If they were not on the file when the First-tier Tribunal came to decide the appeal, it was incorrect to proceed on the basis that the responsibility for this lay with the appellant and had to lead to his appeal being dismissed without any consideration of the merits.

6. There being no dispute as to a material error of law having occurred, we set aside the decision of the First-tier Tribunal and proceeded to re-make it. The directions issued to the appellant with the Notice of Hearing indicated that, absent any further indication from him, it was open to the Tribunal to proceed to re-make the appeal immediately if an error of law was found. A handwritten record on the file showed that the Notice of Hearing and directions had been sent out on 22 May 2013 and there was a corresponding entry on the Tribunal database system. We were satisfied that this indicated that proper service had taken place albeit that the copy of the Notice of Hearing on the file had been endorsed by hand with the issue date of "22/06/13" which could only have been an error where the date of the hearing before us was 20 June 2013.
7. We were greatly assisted by Mr Smart when remaking the appeal as he was able to provide us with the material that had been before the respondent at the date of the decision.
8. We did not find that the appellant had shown on the balance of probabilities that he was the dependent of an Accession Worker. We accepted that his mother was registered as an Accession Worker as we were provided with a copy of her Accession Worker Card; see appendix D of the respondent's bundle. However, the evidence did not indicate to us that the appellant was dependent on her in line with Regulation 7 of The Immigration (European Economic Area) Regulations 2006. The appellant asserted that this was so and provided photocopies of payslips for his mother, bank statements for his mother and bank statements for his sister. None of these documents indicated to us, without more, that these family members provided the appellant with funds or supported him in other ways. In a letter from the appellant dated 21 January 2013, he stated that he had marked up the bank statements of his mother to show which cash withdrawals related to funds given to him. None of the bank statements before us had such marks on them. Even if they had, it remained the assertion of the appellant that this was so. His mother did not provide a statement to this effect.
9. In short, we did not find on the balance of probabilities that the appellant had shown that he was dependent on his mother. He cannot qualify for a Registration Certificate, therefore. We dismissed

the appeal.

DECISION

10. The decision of the First-tier Tribunal disclosed an error on a point of law and is set aside.
11. We re-make the appeal, dismissing it under the Immigration Rules.

Signed:

Date: 1 August 2013



Upper Tribunal Judge Pitt