



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

Appeal Number: IA/50918/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19th August 2014**

**Determination
Promulgated
On 22nd August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AFTAB AHMAD BUTT

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondent: Mr Z Nasim, Counsel, instructed by Visa Wise Immigration Services

DETERMINATION AND REASONS

Introduction

1. For convenience I shall refer to the parties as they were known in the First-tier. The Respondent appeals with permission, the decision of First-tier Tribunal Judge Warren L Grant, promulgated on 11th June 2014, in which he allowed the Appellant's appeal brought against the refusal to issue him an

EEA residence card. The Appellant is the Pakistani father-in-law of a French national Sponsor. The Respondent's refusal was made on the basis that the Appellant's sponsoring daughter in law was not a qualifying EEA sponsor in the context of Regulations 15 and 6 of The Immigration (European Economic Area) Regulations 2006, as relevant for permanent residence rights of her family members, as she had left work in August 2008, and had not returned to work until September 2013, and so did not have five years exercise of treaty rights upon which the Appellant could rely.

The Hearing at the First-tier

2. Judge Grant was persuaded that because the French Sponsor's husband had, in 2012, been granted British citizenship, conditions as to the EEA sponsor's length of residence and activity as a worker, were not applicable.

The Permission Application and Grounds of Appeal

3. Permission was granted on the basis that the issue of the Sponsor's husband's British citizenship was not of relevance. The application had been made with reference to Regulation 7, ie as a family member of a qualifying EEA national, in this case, the Sponsor, not her husband, and his British citizen status was irrelevant.

The Hearing Before Me

4. The Appellant's representative Mr Nasim indicated at the beginning of the hearing that he did not seek to defend the judge's decision allowing this appeal as the force of the grounds was irresistible.
5. The representatives were in agreement that the decision should be set aside, the error being self evidently material. Discussion followed as to the venue for remaking the decision.
6. Mr Nasim submitted that although the Appellant could not succeed on the basis of the arguments which were developed at the First-tier Tribunal, the fact that the judge had made an error so that the decision should be set aside, now left the Appellant free to re-argue the matter on the basis that the Sponsoring daughter-in-law has obtained the requisite five years here as a qualified person in the context of Regulation 6(1)(b) with reference to (2)(a), in particular that her qualified status as a worker continued from 2008 to 2013, uninterrupted by absence of work, because the absence was due to pregnancy/maternity and illness as referred to in the Botwell Medical Centre's letter at page 19 of the Appellant's bundle, so that in fact the Appellant was able to establish his sponsor's 5 years uninterrupted residence as a worker. Whilst not the argument before the First-tier Tribunal, it was an argument open to the Appellant on the appeal ground asserting an entitlement based on her having relevant worker status. The judge's determination carried no findings of fact relevant to

determining the issue. The Appellant was not in a position to proceed before me today because the EEA Sponsor was not at court having recently given birth to a second child. In connection with the pregnancy of the sponsor in 2008 there was a recent European court of Justice case, which he did not have to hand, promulgated on 19 July, which gave relevant guidance.

7. Mr Jarvis was in agreement with the course of action proposed by Mr Nasim because of the absence of any factual findings at the First-tier.
8. Although, as I expressed to Mr Nasim at the time, I am not sure how the case of preliminary ruling in the case of **Jessy Saint Prix (Case C-507/12)** could assist the Appellant in the context of the chronology of this case, the absence of findings of fact at the First-tier, and of the sponsor before me, does mean that I am not in a position to remake the decision today, so that the Appellant will have an opportunity to better his evidence although as will be explained to him, it can only be evidence relating to facts that predated the decision. I have considered venue. I am satisfied that in light of the extensive fact finding exercise to be conducted it is one of those rare cases where remittal is the right course.
9. In short the decision of the First-tier Tribunal is vitiated by material error of law namely a failure to apply the relevant regulations of The Immigration (European Economic Area) Regulations 2006.
10. I set the decision aside and remit the case to the First-tier Tribunal to be remade.

Signed

Date

Deputy Upper Tribunal Judge Davidge