



IAC-FH-CK-V1

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

Appeal Number: IA/25485/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons Promulgated
Newport
On 29th October 2015**

On 19th November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MOHAMED ALY IBRAHIM KHAMIS

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer

For the Respondent: None

**DECISION AND REASONS
EX TEMPORE JUDGMENT**

1. The Secretary of State appeals with permission a decision of the First-tier Tribunal, Judge Suffield-Thompson promulgated on 26th January 2015 in which the judge allowed the Appellant's appeal against the Secretary of State's refusal of his application for a residence permit on the basis of his marriage to an EEA citizen in the context of Regulation 7 and Regulation 17 of the EEA 2006 Regulations. I am going to refer to the parties as they were known in the First-tier Tribunal for my convenience.

2. The Respondent had refused the application for a residence permit on the basis that the marriage was a marriage of convenience. The decision of the Respondent did not raise any other issues and did not reserve any other requirements of the Regulations for future consideration.
3. The grounds of this appeal assert that the Judge was wrong to allow the appeal outright. There was no proper evidential basis to conclude that the sponsor was a qualified person.
4. I find no merit in the grounds.
5. At the hearing at the First-tier Tribunal the Appellant came prepared to deal with the issue of the marriage of convenience, and dealt with such to the satisfaction of the judge who was hearing the case.
6. At the hearing there was no application to amend the reasons for refusal by the Secretary of State's representative. If there had been it is trite law that such an application would have been granted subject to a fair opportunity being provided to the Appellant to address the issue through evidence oral and/or documentary.
7. It is only in the context of the closing submissions that Respondent's representative sought to argue that even if the Appellant satisfied the judge that the marriage was not one of convenience there was inadequate evidence to show that the EEA national was still a qualified person. The position is set out at paragraph 12(iv) of the judge's decision, at page 4, under the heading "The Respondent's Case" when the judge notes the submission was made on the basis that "the wife is now working part-time". The representative argued that the judge should remit the case back to the Respondent so that the financial position could be assessed.
8. The judge rejected the Respondent's submissions that the case should be remitted.
9. The grounds' assertion that without documentary evidence the part time employment was "un-evidenced" is of course erroneous because it ignores the oral evidence. There was no cross-examination of the oral evidence of the Sponsor's part-time employment. The Respondent's representative did not dispute it, as the submission recorded reveals. The grounds' assertion that the judge failed to reason, or inadequately reasoned, the Sponsor's exercise of treaty rights, because of the lack of documentary evidence lacks coherence.
10. As I have set out above the sponsor's exercise of treaty rights was not in issue in the reasons for refusal and was not added as a ground of refusal. There was no proper evidential basis for the judge to treat it as an issue which required reasoning.
11. Even if I were minded to set the decision aside and remake it today so as to deal with the qualified status of the sponsor, on the basis of the uncontested oral evidence of part time work, I could only find that the

sponsor meets the requirements of being a qualified person as set out in Regulation 6 of the 2006 Regulations.

12. For all the reasons I have set out above I find that the decision of the First-tier Tribunal is not vitiated by material error and the decision allowing the Appellant's appeal stands.

Notice of Decision

The Respondent's appeal is dismissed and the decision of the first tier allowing the Appellant's appeal stands.

Signed E Davidge

Date 16 November 2015

Deputy Upper Tribunal Judge Davidge