



IAC-AH-CJ-V1

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

Appeal Number: IA/35192/2014

THE IMMIGRATION ACTS

**Heard at Field House
Oral determination given following hearing
On 14 March 2016**

**Decision & Reasons Promulgated
On 25 April 2016**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**PT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Komusamac, Solicitor of Igor & Co Solicitors
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or court directs otherwise, no report of these proceedings or any form of

publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellant in this case is a citizen of Macedonia who is married to a citizen of the Slovak Republic, who is accordingly an EEA citizen. I shall throughout this determination refer to the appellant's wife as "the sponsor". The couple have two children, born respectively in 2009 and 2011, and I have anonymised this decision, as Upper Tribunal Judge Plimmer did before me, in order to protect the children's privacy.
2. The appellant applied for a residence permit as the spouse of an EEA national exercising treaty rights but his application was refused by the respondent. He appealed against this refusal but his appeal was dismissed by First-tier Tribunal Judge Seelhoff in a decision promulgated on 14 April 2015 following a hearing at Richmond Magistrates' Court on 29 March 2015. The appellant appealed against this decision and was granted permission to appeal by Upper Tribunal Judge Reeds and following the grant of permission to appeal, Upper Tribunal Judge Plimmer found that Judge Seelhoff's decision had involved the making of an error on a point of law and must accordingly be set aside. She directed that a new decision would be made at an adjourned hearing which should be before her but for reasons unconnected with this case it has been necessary to make a transfer order and accordingly the appeal is now before me.
3. The issue which remains following Judge Plimmer's decision and directions is whether or not the sponsor who is self-employed can truly be said to be exercising treaty rights in this country as she claims. One of the matters which caused Judge Seelhoff to consider that she was not was that the economic activity which she was carrying out was said to be "nugatory" because in one particular period of three months she had only earned about £850. Judge Plimmer did not consider that this was a relevant consideration because there was no requirement to earn what might be called a "significant" income; what was required was that she could properly be described as self-employed. The appellant was required to provide evidence to demonstrate that the sponsor was indeed exercising treaty rights, in that she was carrying out economic activity in this country.
4. It is common ground that I have to consider the evidence as it is today. If I am satisfied that as at today's date the sponsor can properly be described as self-employed then the appellant is entitled to a residence card as the husband of an EEA national exercising treaty rights in this country.
5. I heard evidence from the sponsor who relied on a statement which she had prepared and which is dated twelve days after directions had been given by Judge Plimmer. In cross-examination the sponsor was asked why she had not produced any further documents covering the period after 14 December 2015 and she very reasonably replied that she had prepared the documentation as soon as she could after the directions had been given. Moreover she then produced her book of

invoices together with an up-to-date bank statement from which it was apparent that in the period since the beginning of January until the beginning of March she had earned just under £3,000 from the various work she had been doing which is a combination of cleaning, sewing and also, from time to time, painting and decorating.

6. Having heard the sponsor give her evidence and the answers which she made to the questions which were very properly put to her on behalf of the respondent, I am in no doubt whatsoever that she is telling the truth. I only have to be satisfied on the balance of probability but I wish to record that I was in fact satisfied to a much higher standard that her evidence was truthful. I would have so found to the criminal standard of proof had I been required to do so. The evidence she gave was entirely consistent with the documents she had provided and it was quite clear to me that she carries out whatever work she can at the same time as bringing up her children and that this is and can truly be described as genuine economic activity. She very candidly accepted that even if she was not carrying out any work, she and her family could probably survive on the income which her husband provides but that is not the test. The test is whether or not she herself is carrying out economic activity, which she clearly is.
7. At the hearing before Judge Seelhoff it had been conceded on behalf of the appellant that he was not entitled to permanent residence yet because the sponsor, his wife, had not worked during the period just after she had had her second child. I am not persuaded that that concession needed to be made because it is at least arguable that where somebody is self-employed but stops working for a period consistent with the period that a worker would be entitled to be on maternity leave, it does not follow that that person would lose the status of a worker within the meaning of the Rules but it is not necessary for me to form any definitive view as to this for the purposes of this Decision. So far as this decision is concerned it is quite clear that the applicant is currently engaged in economic activity and is a worker for the purpose of the Rules and accordingly that the appellant is entitled to a residence card and I so find.

Notice of Decision

The decision of First-tier Tribunal Judge Seelhoff having been set aside as disclosing an error of law, I remake the decision as follows:

The appellant's appeal is allowed under the EEA Regulations.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', written over a light blue grid background.

Upper Tribunal Judge Craig

Date: 15 April 2016