



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06182/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 11 July 2018

Decision & Reasons Promulgated  
On 19 September 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AYESHA JAMIL**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Hashmi, instructed by Kingswell Watts, Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Ayesha Jamil, was born on 16 November 1990 and is a female citizen of Pakistan. She applied for a residence card as confirmation of her right to reside in the United Kingdom as a family member of a British citizen, Mr Armad Farooq (hereafter

referred to as the sponsor). By a decision dated 1 June 2017, the Secretary of State refused the application. The appellant appealed to the First-tier Tribunal (Judge R Chowdhury) which, in a decision promulgated on 18 December 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The relevant Regulation is Regulation 9 of the Immigration (European Economic Area) Regulations 2016:

9. – (1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member (“F”) of a British citizen (“BC”) as though the BC were an EEA national.
- (2) The conditions are that –
- (a) BC –
- (i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or
- (ii) has acquired the right of permanent residence in an EEA State;
- (b) F and BC resided together in the EEA State; and
- (c) F and BC’s residence in the EEA State was genuine.
- (3) Factors relevant to whether residence in the EEA State is or was genuine include –
- (a) whether the centre of BC’s life transferred to the EEA State;
- (b) the length of F and BC’s joint residence in the EEA State;
- (c) the nature and quality of the F and BC’s accommodation in the EEA State, and whether it is or was BC’s principal residence;
- (d) the degree of F and BC’s integration in the EEA State;
- (e) whether F’s first lawful residence in the EU with BC was in the EEA State.
- (4) This regulation does not apply –
- (a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
- (b) to a person who is only eligible to be treated as a family member as a result of regulation 7(3) (extended family members treated as family members).
- (5) Where these Regulations apply to F, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F.
- (6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the

acquisition of that right under regulation 15, had it taken place in the United Kingdom.

(7) For the purposes of determining whether, when treating the BC as an EEA national under these Regulations in accordance with paragraph (1), BC would be a qualified person –

- (a) any requirement to have comprehensive sickness insurance cover in the United Kingdom still applies, save that it does not require the cover to extend to BC;
- (b) in assessing whether BC can continue to be treated as a worker under regulation 6(2)(b) or (c), BC is not required to satisfy condition A;
- (c) in assessing whether BC can be treated as a jobseeker as defined in regulation 6(1), BC is not required to satisfy conditions A and, where it would otherwise be relevant, condition C.

3. The judge found that the sponsor had exercised treaty rights in Ireland [38]. He also accepted that the appellant and the sponsor genuinely “wanted to make an effort to live in that country”. The judge accepted [39] that the sponsor was genuinely employed in a sales role for a company in Ireland. At [41], the judge accepted that the appellant had produced evidence that she made a “concerted effort to relocate [her] life there”. Ireland was the couple’s genuine primary residence. Having made those findings, the judge went on to say at [43]:

I cannot find on the evidence presented before me that this appellant can be regarded as having integrated into Irish society. She was open and truthful in stating that her representative’s letter was wrong in submitting that she was a member of local clubs etc. She did say (and the sponsor independently corroborated) she was involved in campaigning for the gay marriage vote in Ireland. Nevertheless given the length of her residence in that country I do not find that this one activity is sufficient to show on a balance of probabilities that she had demonstrated to the requisite degree that she integrated into Ireland (sic). No other was presented to me showing any other activities or local involvement. It is for this reason alone I must dismiss the appeal”.

4. That the judge erred in law was accepted also by Mr Diwnycz, who appeared before the Upper Tribunal for the Secretary of State. As Judge Chohan accurately identified in his grant of permission to appeal, integration as required by Regulation 9(2)(d) is “only one factor to be considered when deciding whether or not the appellant’s and sponsor’s residence was genuine”. The genuine nature of the residence is the overriding consideration for the satisfaction of the requirements of Regulation 9. The judge clearly found that the residence was genuine and his subsequent finding that the appellant had not integrated into Irish society appeared to contradict that primary finding. I agree with Ms Hashmi, who appeared for the appellant before the Upper Tribunal, that the requirement of integration is not a stand-alone requirement; rather, it is one of several factors which may indicate the genuineness of residence in the EEA State. I was not asked by Mr Diwnycz to interfere with the findings of fact on the evidence made by the judge so, in the circumstances, I set aside the First-tier Tribunal’s decision and re-make the decision allowing the appeal against the Secretary of State’s refusal.

**Notice of Decision**

5. The decision of the First-tier Tribunal which was promulgated on 18 December 2017 is set aside. I have re-made the decision. The appellant's appeal against the decision of the Secretary of State dated 1 June 2017 is allowed.

No anonymity direction is made.

Signed

Date 17 September 2018

Upper Tribunal Judge Lane