



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/12644/2016**

Appeal Number:

THE IMMIGRATION ACTS

At: Birmingham, City Tower

Decision & Reasons

Promulgated

On: 6th April 2018

On: 13th April 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MUSTAFA MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Norman, Counsel instructed by Syeds Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan born on the 28th June 1980. He appeals with permission against the decision of the First-tier Tribunal (Judge Asjad) to dismiss his appeal against a decision to refuse to grant him a 'derivative' right of residence in the UK with reference to Regulation 15A of the Immigration (European Economic Area) Regulations 2006.
2. The Respondent accepted, by way of her letter dated 6th October 2016, that the Appellant is a direct relative of an EEA national: he is father to his minor son, a Polish national residing in the UK. It was further accepted that the Appellant shares responsibility for the

child's care with the child's mother. The Respondent nevertheless declined to recognise any right of residence:

- i) Because the evidence did not establish that the child in question had comprehensive sickness insurance and so could not be considered a "self-sufficient person" under Regulation 15A(2)(b)(ii);
 - ii) Because the person with joint responsibility for the care of the child was an exempt person: the child's mother is a Polish national;
 - iii) There was no evidence that the child would be required to leave the UK if the Appellant were to be refused a residence card. The child lives with his mother who would, on the evidence available, remain in the UK.
3. On appeal the First-tier Tribunal did not deal with any of these three issues, but came up with a whole other reason to dismiss the appeal, that being that the child was financially dependent upon his father, whose permission to work in the UK was in doubt: even if his employment is lawful he had at best leave extended by s3 of the Immigration Act 1971 and in those circumstances his income could not be relied upon to create a 'self sufficiency' for the child: MA & Others (EU National - self sufficiency - lawful employment) Bangladesh [2006] UKAIT 00090 applied.
 4. The grounds take exception to the Tribunal's reasoning on several fronts, not least that the Tribunal did not mention its thinking, invite submissions on it or give the parties an opportunity to address it on the authorities later cited.
 5. Before me Mr Mills conceded that the Tribunal had so erred but contended that it made no difference to the outcome of the appeal because the evidence had not established that any of the three concerns raised in the refusal letter had been addressed.
 6. Ms Norman maintained that the First-tier Tribunal decision was wrong but conceded that the Appellant could not establish a derivative right of residence under the Regulations because his former partner, with whom he shares care of their 11 year-old son, is a Polish national and is therefore an 'exempt person'.
 7. In light of the realistic concessions made by both parties I set the decision of the First-tier Tribunal aside for error of law. The decision is remade as follows: "the appeal is dismissed under the Regulations".

Decisions

8. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside.
9. The appeal is dismissed.
10. There is no order for anonymity.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, stylized font.

Upper Tribunal Judge Bruce
6th April

2018