



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

Appeal Number: EA/07296/2018

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 10th June 2019**

**Decision & Reasons Promulgated
On 12th June 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

BABAR HAMID KHAN NIAZI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: in person

For the Respondent: Mr S Jones, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Monaghan dismissing his appeal, after consideration of the papers only, against a decision of the respondent refusing to issue him with a residence under the Immigration (European Economic Area) Regulations 2016. Mr Niazi is a Pakistani Citizen and is married to a British Citizen who has exercised Treaty Rights in another European Country – Spain.
2. The reason given by the respondent for refusing the residence card was that the appellant had failed to show he was residing in the UK in

accordance with the Regulations; the essence of that decision being that the appellant's wife had not been available to answer any telephone calls and therefore, given the lack of evidence that she was working or self-employed, the respondent was not satisfied she was exercising Treaty Rights.

3. The appellant sent two bundles of documents to the Tribunal to support his appeal, such documents including copy and original evidence that his wife was indeed exercising Treaty Rights. Unfortunately, neither of those bundles were before the First-tier Tribunal judge before her decision was promulgated, despite them being received by the Tribunal. The First-tier Tribunal judge has erred in law in failing to take account of material evidence.
4. Ms Jones correctly acknowledged that the decision could not, in those circumstances stand.
5. I set aside the decision.
6. Ms Jones did not have the documents relied upon by the appellant. I handed her the documents¹ which she examined, with the appellant. She accepted that the documents contained relevant and necessary evidence to show that not only was the appellant's wife exercising Treaty Rights at the date of the application and the First-tier Tribunal decision but was also exercising Treaty Rights today. She acknowledged the appeal had to be allowed.
7. I allow the appeal; the appellant meets the requirements of the regulations for the issue of a Residence Card.

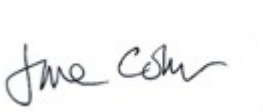
Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside set aside the decision.

I re-make the decision in the appeal by allowing it.

Date 10th June 2019



Upper Tribunal Judge Coker

¹ The documents were retained by the appellant on conclusion of the hearing.