



IAC-AH-PC-V1

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

Appeal Number: IA/00650/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 September 2015**

**Decision & Reasons Promulgated
On 14 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MUHAMMAD ALTAF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua, Janjua & Associates

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Muhammad Altaf, was born on 15 March 1981 and is a male citizen of Pakistan. The appellant entered the United Kingdom on 4 April 2014 and was given six months' leave as a visitor. He applied in October 2014 for a residence card as a confirmation of his right to reside in this country under European Community law. The appellant was refused a residence card by the respondent by a decision dated 21 December 2014. The appellant appealed to the First-tier Tribunal (Judge Cox) which in a decision promulgated on 22 April 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Designated Judge McClure stated:

“The sponsor is a British citizen who went to Pakistan to marry and then went for a period of six months to live and work in Spain allegedly with her spouse, the appellant. ... at paragraph 26 [of the decision of the First-tier Tribunal] the judge has accepted that the sponsoring spouse has been self-employed in Spain. In the light of that and in light of the wording of Regulation 9 [EEA Regulations 2006] it is arguable that the judge may have imposed a requirement of working for longer than is justified under the Regulations. In the circumstances leave is granted. However, consideration has to be given to Regulation 9(2)(c).”

3. Regulation 9 of the 2006 Regulations provides:

9. — (1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a United Kingdom national as if the United Kingdom national were an EEA national.

(2) The conditions are that —

(a) the United Kingdom national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom; and

(b) if the family member of the United Kingdom national is his spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in that State before the United Kingdom national returned to the United Kingdom.

(3) Where these Regulations apply to the family member of a United Kingdom national the United Kingdom national shall be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 13 to that family member.

4. The judge considered the evidence carefully. He reached a number of findings which are set out in the decision especially at [32] and following. He found at [37] that “the sponsor intended to obtain an advantage by artificially creating the conditions laid down for obtaining rights under European law.” At [38], the judge stated that he was satisfied that the sponsor and appellants had “sought to manufacture a situation such as to comply with the conditions under Article 7 but this is artificially creating those conditions and there was not a genuine intention to pursue activities as a self-employed person in Spain.” Importantly at [39] the judge also found that he was “... satisfied that the sponsor did not transfer the centre of her life to Spain and therefore the appellant does not meet the requirements of regulation 9 of the Regulations. I find the decision is in accordance with the EEA Regulations and does not breach Community law.”

5. Designated Judge McClure was right to note that, although the grounds of appeal point out that the judge [26] found that the sponsor had been self-

employed in Spain there was no proper challenge to the judge's finding that the sponsor did not transfer the centre of her life to Spain [39]. The grounds [5] do no more than to assert that "ample evidence" had been provided by the sponsor regarding the transference of the centre of her residence to Spain but that assertion is, with respect, nothing more than a disagreement with findings made by the judge to consider both the written and the oral evidence. It is clear that the requirements of Regulation 9 are conjunctive and that the Appellant in this instance has failed to satisfy the judge (notwithstanding any findings which he may have made regarding sub-paragraphs (a) and (b)) that Regulation 9(2)(c) has been satisfied. It is apparent from the decision that the judge was not impressed by the sponsor as a witness and he gave detailed reasons for considering that her evidence was, in certain aspects at least, unreliable. The judge's finding, in those circumstances, that Regulation 9(2)(c) was not satisfied was clearly unaffected by any error of law. Since all the sub-paragraphs must be satisfied by the appellant if he was to succeed in his appeal, it follows that this appeal must be dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 1 November 2015

Upper Tribunal Judge Clive Lane

**TO THE RESPONDENT
FEE AWARD**

No fee order.

Signed

Date 1 November 2015

Upper Tribunal Judge Clive Lane