



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10875/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 December 2014

Determination Promulgated
On 5 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Khalida Zahoor
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr E Raw, instructed by AKL Solicitors
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Khalida Zahoor, date of birth 7.7.53, is a citizen of Pakistan.
2. This is her appeal against the determination of First-tier Tribunal Judge Broe promulgated 16.7.14, dismissing her appeal against the decision of the respondent to refuse her application for a residence card as confirmation of a right to reside in the United Kingdom, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 23.6.14.

3. On 7.8.14, First-tier Tribunal Judge Holmes found the application for permission to appeal to the Upper Tribunal was out of time, declined to extend time and further indicated that the grounds did not identify a ground of appeal that would lead to the decision being set aside. However, when renewed to the Upper Tribunal, on 13.11.14 Upper Tribunal Judge Allen found it arguable that the judge erred in law in respect of grounds 2 and 3, but stated that the materiality of ground one remained to be made out. Judge Holmes had directed that any renewed application to the Upper Tribunal should be supported by evidence as to what occurred during the period 16 July to 29 July 2014.
4. Thus the matter came before me on 11.12.14 as an appeal in the Upper Tribunal.
5. Unfortunately, Judge Allen did not address the question of the application being out of time. The Rule 24 response raised the issue as to whether there is any valid appeal.
6. I dealt with the validity of appeal as a preliminary issue.
7. The decision of Judge Broe was promulgated on 16.7.14. Notice enclosing a copy of the decision was dispatched by the Tribunal on 16.7.14. The appellant has produced a letter of that date but stamped 22.7.14, by the solicitors being the date they claim they received notice of decision. I had some concerns as to this, particularly since the solicitor's version of the letter they claimed to have been received did not match the layout of the copy letter on the case file. Despite the directions of Judge Holmes, the appellant produced no witness to confirm the letter had been received on 22.7.14, but merely set out a series of assertions in the grounds for permission to appeal. It is asserted that the appellant did not receive a copy of the decision at her home address, whereas the court file indicates that it was sent out at the same date to both the appellant at her home address and to her solicitors.
8. Notwithstanding my concerns set out above, I have to assume that Judge Allen intended to grant an extension of time and thus I do so, enabling the appeal to proceed.

Error of Law

9. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Broe should be set aside.
10. For the reasons set out herein, after considering the evidence and the submissions of the representatives, I find no material error of law requiring the decision to be set aside and remade.
11. The relevant background to the appeal can be briefly summarised as follows. The appellant came to the UK in December 2011 as a family visitor. On 22.6.12 she made an application for an EEA residence card as the family member of her son Nadeem Sheikh, which was refused on 16.11.12.

12. A further application for an EEA residence card was made on 2.9.13, refused on 25.2.14, which refusal is the subject matter of this appeal. This was a 'Surinder Singh' type application. It was claimed that her son had exercised Treaty rights as a worker in another EEA state, but she had not resided with him. At all material times, she remained in the UK. It was claimed that he had worked in France between 25.11.11 and 4.5.12, returning to the UK 6 days later, taking up employment with a courier company on 21.5.12.
13. The refusal decision noted that the Secretary of State was not satisfied the appellant and her son were residing together in France before returning to the UK, and thus the application was refused. Article 8 was also considered.
14. The refusal decision relied on regulation 9(2)(b) on the basis that the British citizen son failed to provide evidence that he was a qualified person by working in an EEA state before returning to the UK and that his mother was living with him in that EEA state. At the appeal hearing before the First-tier Tribunal it was contended that she did not have to show that she lived with him in France. She claims to have been supported by him for some 20 years whilst she was in Pakistan and lived with him since she arrived in the UK. It was pointed out that under regulation 9(2)(b) the only relative required to have lived abroad with the British citizen is a spouse or civil partner. A direct relative of the ascending line only had to prove dependency and thus, it is argued, under the provisions of regulation 7(i)(c) the appellant qualifies as a family member.
15. Judge Broe accepted Mr Raw's submissions that the appellant did not have to show that she resided with her son in France, as that is clearly not the requirement under regulation 9(2). However, the judge relied on regulation 9(2)(c) and 9(3) of the regulations as amended, and was not satisfied that the centre of the son's life had transferred to the EEA state where he worked for a number of months.
16. The judge relied on the fact that some of the documents adduced had not been translated from French, but more particularly on a pro forma statement with standard paragraphs and gaps to be filled in. At §22 the judge concluded that this extraordinary document was designed for such applications in order to try to fit the EEA regulations. At §23 the judge gave cogent reasons for finding that the son's life had not in fact transferred to France, but that his time there was no more than a manoeuvre designed to facilitate the appellant's application.
17. Mr Raw's argument, set out in the grounds of application for permission to appeal, is that the judge applied the wrong set of regulations. Whilst the EEA regulations were amended by the Immigration (EEA) (Amendment) (No2) Regulations 2013, which came into force on 1.1.14, there were transitional provisions set out in Schedule 3, preserving the pre-amendment regulations in certain conditions, including in paragraph 2 in relation to family members of British citizens. This provides the amendment has no effect in relation to the family member of a British citizen where subparagraphs (2) or (3) are met. Subparagraph (2) relates to a person with a permanent right of residence in the UK under the 2006 Regulations; this does not

apply to the appellant. Subparagraph (3) requires the appellant, at the date of coming into force of the amended regulations, to have a right to reside under the 2006 Regulations and (3)(c), had made an application under the 2006 Regulations for a registration certificate or residence card which had been refused and in respect of which an appeal under regulation 26 of the 2006 Regulations could be brought while the appellant is in the UK.

18. It is submitted that the appellant had a right to reside under the 2006 Regulations and had made an application on 2.9.13 for a residence card, which had been refused on 25.2.14, and in respect of which an appeal could be brought and was brought against that refusal.
19. It follows that Judge Broe has applied the wrong version of regulation 9. The pre-amendment version should have been applied, under which it was necessary only to show that the appellant is a family member of a British citizen who was residing in another EEA state as a worker before returning to the UK. The transfer of the son's centre of life was not a relevant issue on the facts of this case. What was relevant was the question of dependency and whether the son was genuinely working whilst in France.
20. In respect of the latter issue, the judge found in effect that any time spent by the son in France was merely a device to try and satisfy the requirements of the EEA regulations. The appellant came to the UK to reside with her son. In order to meet the EEA regulations he went to France in November 2011, returning in May 2012. During that period of time the appellant remained in the UK, living in the appellant's home. It is evident that the judge did not accept the son's pro forma statement that he was having difficulty finding a job in the UK and found an opportunity to work in France. This was no more than a manoeuvre designed to facilitate the appellant's application for an EEA residence card. It follows, that the son's time in France was a contrivance and not genuine. When the appellant arrived in the UK in December 2011, the son was not in the UK, but allegedly in France, until May 2012. He claimed to have worked in a toy shop for about 5 months. However, the evidence he relied on was not translated. At §20 the judge correctly applied only limited weight to these documents.
21. It is clear from the determination read as a whole that the judge was not satisfied that there was any genuine employment in France and that there was insufficient translated evidence to demonstrate such employment. In no part of the decision does the judge accept that there is sufficient evidence that the son was genuinely exercising Treaty rights by working in France. Mr Raw suggested that it is obvious that the documents are wage slips and bank statements. However, it is incumbent on the appellant to provide translations of documents she seeks to rely on. No such translations were provided. In the circumstances, even though the judge had applied the wrong version of regulation 9 and considered whether the centre of life had been relocated to France, it still remains the case that the appellant failed to make out qualification under regulation 9, that the son resided in France as a worker or self-employed person before returning to the UK. It is very clear that this is an entirely

unmeritorious claim, with contrived alleged work in France for the single purpose to get round the requirements of the Regulations.

22. Notwithstanding the fact that there is no removal decision, the judge went on to consider the appellant's private and family life circumstances both under the Rules and under article 8 ECHR, reaching the conclusion at §32 that there is no family life between the appellant and her son or other family members such as to engage article 8 ECHR and that the decision of the Secretary of State was entirely proportionate, following the Razgar five step approach. I find the judge's conclusions in relation to private and family life sustainable on the evidence and ones which the judge was entitled to reach. It cannot be said that the decision in relation to article 8 is perverse or one to which no judge properly directed could come. In particular as it is open to the appellant to make a fresh application providing proper translated evidence and as there is no removal decision, it would be difficult to see how the decision of the Secretary of State could ever be disproportionate to the appellant's private and family life rights under article 8 ECHR.
23. In the circumstances, and for the reasons set out herein, I find that notwithstanding an error of law in the application of the regulations, the outcome of the appeal would have been the same, regardless of which version of regulation 9 is to be applied.

Conclusion & Decision

24. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup