



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47450/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 20 November 2015

Decision and Reasons Promulgated
On 27 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MOMINA SEEMAB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan, Counsel instructed by Hussain Immigration Law Ltd
For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge D N Harris promulgated on 18 May 2015 who allowed the Appellant's appeal against

the decision of the Respondent dated 11 November 2014 to refuse to grant her a Residence Card under Regulation 8(2) of the Immigration (EEA) Regulations 2006 as an extended family member of her brother in law Ghazanfar Mahmood and her niece Rishmin Fatima who are EEA nationals. The Respondent did not accept that the Appellant had provided sufficient evidence of dependency on her relatives either in Pakistan or the UK as required under the Regulations.

The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Harris ("the Judge") allowed the appeal against the Respondent's decision. The Judge considered the case on the papers.
4. He accepted that on the basis of the documentary evidence now available to him that there was clear evidence of money transfers over a period of five years showing that Mr Mahmood had been making contributions on a monthly basis to the Appellant while she was in Pakistan and this dependency continued while the Appellant lived in the United Kingdom. He therefore found that the Appellant met the requirements of Regulation 1(a) of Regulation 8(2).
5. He also accepted that the Appellant lived in the household of the second sponsor Ms Rishmin while in the United Kingdom but was not satisfied that there was sufficient evidence of dependency in the case of the second Sponsor.
6. He concluded that the Appellant was therefore entitled to a Residence Card as an extended family member dependent on Mr Mahmood and allowed the appeal.
7. Grounds of appeal were lodged arguing that having found that the Appellant was an extended family member of the sponsor the Judge was obliged to remit the matter to the Respondent for her to exercise the discretion available under Regulation 17(4) rather than allow the appeal.
8. On 15 July 2015 First-tier Tribunal Judge Holmes gave permission to appeal.
9. There was a Rule 24 Response from Hussain Law conceding that an error of law had been made by the Judge.
10. Before me Ms Khan also conceded that the Judge made an error of law and that the decision should be remade.

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made a material error of law.
12. There was no challenge to the findings made by the Judge that the Appellant was an extended family member of an EEA national under Regulation 8(2) of the EEA Regulations. The only matter in issue was what the Judge should have done thereafter.
13. I am satisfied that Regulation 17(4) makes the issue of a residence card to an extended family member a matter of discretion. Where the Secretary of State has not

yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State. This is what the Judge should have done in this case.

Decision

- 14. There was an error on a point of law in the decision of the First-tier Tribunal with regard to the exercise of the discretion available under Regulation 17(4) of the EEA Regulations such that the decision is set aside**
- 15. I remake the appeal.**
- 16. I allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State.**

Signed

Date 22.11.2015

Deputy Upper Tribunal Judge Birrell