



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/20346/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 June 2017**

**Decision &  
Promulgated  
On 16 June 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**AAMIR QAMARUDDIN ABBASI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Janjua of Morden Solicitors (London)  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge N M K Lawrence promulgated on 29 September 2016 dismissing the Appellant's appeal against a decision of the Respondent dated 12 May 2015 to refuse to issue a Residence Card with reference to regulation 6 of the Immigration (European Economic Area) Regulations 2006.
2. The Appellant is a citizen of Pakistan born on 12 November 1978. He had applied for a residence card on the basis of being the spouse of a 'qualified person'. He is married to Ms Humaira Saddaf Abbasi, a German national born on 18 November 1986 in Karachi. It was said in his application that his wife was exercising 'Treaty rights' by reason of being

self-employed offering tuition services. The Respondent did not accept that sufficient evidence had been provided with the application to demonstrate Ms Abbasi was economically active.

3. The Appellant appealed to the Immigration and Asylum Chamber. His appeal was dismissed for reasons set out the Decision and Reasons prepared by Judge Lawrence and promulgated on 29 September 2016. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Brunnen on 29 April 2017.
4. I do not propose to go into any great detail as to the background circumstances of the application and appeal given that Mr Tarlow, in light of the discussion that has taken place this morning and notwithstanding the contents of a Rule 24 response dated 22 May 2017, has helpfully and realistically acknowledged there are difficulties with the First-tier Tribunal Judge's decision that require it to be set aside and the Appellant be afforded the opportunity of a fresh hearing of his appeal.
5. It seems to me clear that the First-tier Tribunal Judge has unfortunately proceeded on the basis of two significant misconceptions of fact sufficient to amount to an error of law.
6. At paragraph 10 of the Judge's Decision he refers to the evidence that was before him both in terms of supporting documents and the witness statements of the Appellant and his wife, and says this:

*"In support of the application the only economic activity the sponsor [i.e. Ms Abbasi] claimed was self-employment. The employed section is left blank. I note that in her witness statement the sponsor claims she has been both employed (part-time) and self-employed since November 2010. In support of her claim being employed she has provided P45s between pages A55 and A60 and PAYE coding notice between pages A61-A62 of Bundle A. At A55 the employer is said to be X-Blade Motor Bikes Ltd. The date of leaving employment is said to be 25 September 2015. At A58 there is another P45. The employer is said to be Focus Care Link Ltd. The date of leaving is said to be 25 September 2015. The Tribunal has not been provided with any employment of contract with Focus Care Link Limited."*

7. I am satisfied that the Judge proceeded upon a misapprehension of fact both in respect of his view that the Appellant had claimed to be employed by Focus Care Link Ltd, and also in respect of his view that the Appellant was claiming that she had been in employment (as distinct from self-employment) since November 2010.

8. There is indeed a P45 in respect of Focus Care Link Ltd to be found at pages A58-A60 of the Appellant's bundle. However, this P45 relates to the employment of the Appellant, Mr Abbasi, and does not relate to any claimed employment by his wife with Focus Care Link Ltd.
9. So far as the suggestion that the Appellant had claimed to be in employment since November 2010, the source of the Judge's understanding appears to be at paragraph 2 of Ms Abbasi's witness statement. At paragraph 2 she indicates her exercise of Treaty rights with particular dates in the following way:

*“September 2005 to July 2010 Student Full-time  
November 2010 to date Self-employed and part-time employed”.*

10. In support of the appeal before this Tribunal it has been contended on behalf of the Appellant that the reference to being 'self-employed and part-time employed' from 'November 2010 to date' is ambiguous, and does not inevitably mean that the Appellant was both self-employed and part-time employed throughout that period but rather that that is how in combination she exercised her Treaty rights since November 2010.
11. I accept that there is such an ambiguity, and moreover that it is apparent that the ambiguity was not put to the Appellant or his wife at any stage before the First-tier Tribunal. I am satisfied that the Appellant and his wife intended to convey that she had exercised Treaty rights through a combination of self-employment and part-time employment since November 2010, but did not intend to assert that she had been employed since November 2010. Indeed, upon a consideration of all of the papers on file it is absolutely clear that Ms Abbasi's employment (as distinct from self-employment) was raised for the first time in the grounds of appeal submitted to the First-tier Tribunal by reference to her employment with X-Blade Motorbikes which was said to have commenced just a few days before the Secretary of State's decision letter of 12 May 2015. There is no overt suggestion anywhere else in any of the statements or supporting documents of the Appellant claiming his wife to have been employed at any time prior to that.
12. It follows that there are two significant misapprehensions of fact at paragraph 10 of the First-tier Tribunal Judge's decision. It is clear, in my judgment, from the contents of paragraph 11 that the Judge took these matters forward into an assessment of the credibility of the Appellant and his wife. Paragraph 11 refers to some of the supporting documents and then, in part, says this:

*“Further, I note that if the sponsor has been working part-time since November 2010 this ought to have been stated in the application form and wages stated in the accountant’s letter. The period covered by this letter is from November 2010 to March 2015. The sponsor states that she has been self-employed and was also employed part-time over this period. However, I note that the accountant’s certificates do not make any reference to employment status of the sponsor for the stipulated period. Further I note the SA302s only indicate income from self-employment and not from employment. There is no record of any evidence of employed work or income thereof. It appears the sponsor did not disclose the fact of employment to her accountant who in turn, quite understandably, [did not disclose] it to HMRC. The sponsor’s apparent failure to disclose this to her accountant casts doubt on the accounts prepared by the appellant and the SA302s issued by HMRC. In the circumstances I am unable to attach any weight to documents purporting to show employed status of the sponsor.”*

13. It follows that the misapprehensions of fact were clearly material considerations in the evaluation of some of the issues that were core to the outcome in the appeal. In those circumstances I am satisfied that the decision of the First-tier Tribunal Judge must be set aside for error of law.
14. In those circumstances it is unnecessary for me to give further consideration to other aspects of the challenge to the First-tier Tribunal Judge’s decision. I do note, however, that Mr Tarlow in the course of discussion realistically acknowledged that the absence of a written contract between Ms Abbasi and any of the parents of the children whom she tutored was not inevitably fatal to her claim to be self-employed as a children’s tutor.
15. Be that as it may, the issues in this appeal do require to be resolved by way of a further hearing and it is common ground between the representatives - and I accept as appropriate - that this should take place before the First-tier Tribunal.

### **Notice of Decision**

16. The decision of the First-tier Tribunal Judge is set aside for error of law.
17. The decision in the appeal is to be remade before any Judge of the First-tier Tribunal other than Judge N M K Lawrence, with all issues at large.
18. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing*

Signed:

Date: **15 June 2017**

**Deputy Upper Tribunal Judge I A Lewis**