



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/02121/2017**

**Appeal Numbers:**

**A/02124/2017**

**E**

**A/02128/2017**

**E**

**A/02131/2017**

**E**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 November 2018**

**Decision & Reasons  
Promulgated  
On 20 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**SAJIDA PARVEEN (FIRST APPELLANT)  
MUNEEB MUHAMMAD (SECOND APPELLANT)  
MARIA IRAM (THIRD APPELLANT)  
MUNEEZA UROOJ (FOURTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms C Nicholas, instructed by Law Lane Solicitors  
For the Respondent: Ms K Pal, Home Office Senior Presenting Officer

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal with permission against the decision of the First-tier Judge, who in March 2018 heard and dismissed the appellants' appeals against a decision of 9 February 2017 refusing to

grant residence cards to them as family members of Mr Amin a British citizen, to whom I will refer hereafter as the sponsor. The Secretary of State did not accept that he was a qualified person in Italy, that his family had resided here with him or that their joint residence in Italy was genuine and it was considered that if they had resided in Italy it was a means of circumventing the Immigration Rules as all four appellants had previously been refused entry to the United Kingdom under the Rules.

2. The judge noted the amount of time that they had been in Italy, and noted the fact that the sponsor had set up a business in Italy but considered it to be notable that there was a lack of documents to show that the company was ever trading, there were no accounts of previous and subsequent years, no business receipts and no evidence of tax being paid. The children spent some months in Italy, but there was no evidence that either of them had attended school and the judge did not accept the explanation as to why that was the case. So he concluded, noting the fact that they had obtained residence cards in Italy on 3 May 2016, that they had very soon come to the United Kingdom thereafter and that this was a blatant attempt to avoid the Immigration Rules applying to non-EEA nationals. He did not accept that their residence in Italy was genuine and considered the purpose of going to Italy was to circumvent the Immigration Rules, noting also that the sponsor had retained a home in the United Kingdom and found that they were not integrated into Italy.
3. The appellants sought and were granted permission to appeal on a number of bases. The grant of permission considered that it was arguable that the judge had misdirected himself in finding that the sponsor was not a qualified person when living in Italy when the appellants were granted residence cards there, on the basis that they were family members of the sponsor who was found to be a qualified person and that might have infected the decision on other grounds when considering the oral evidence. There was an earlier adjourned hearing before me when, what were thought to be residence cards, were found not to be residence cards in fact, but we now have the originals and an explanation as to why it was that they were not produced previously and I have seen those and accept that they are genuine documents. They are residence cards provided by the Italian authorities to the appellants.
4. It is relevant to note the two documents that have been put in. One is the Home Office guidance for people entering the United Kingdom as the holder of an Article 10 residence card and this says in the first section that an Article 10 residence card is a document which is issued under EU law to non-EEA family members of EEA nationals who are exercising free movement rights in another Member State than that of their nationality. For example a non-EEA spouse of a French national who is living and working in Italy may be issued with an Article 10 residence card by the Italian authorities. It sets out the kind of wording that the document should contain, what you are allowed to do with a residence card, a valid genuine Article 10 residence card allows the non-EEA national family

member of an EEA national to travel to the UK without the requirement to obtain an EEA family permit and I think there is no suggestion that the evidence, which was required to be brought in addition to the residence cards was not provided.

5. The other document is the judgment of the CJEU (at the time the ECJ) in Akrich in 2003. I will not go into any detail in reading out what is said there but it is particularly pertinent to note the third ruling of the court in answer to the questions which had been referred to by the Immigration Appeal Tribunal in October 2003: "Where the marriage between a national of a Member State and a national of a Non-Member state is genuine the fact that the spouse has installed themselves in another Member State in order on their return to the Member State, of which the former is a national, to obtain the benefit of rights confirmed by Community law, is not relevant to an assessment of their legal situation by the competent authorities of the latter State. I need to look at the decision of the judge in the context of the guidance and the fact of the residence cards and the judgment of the ECJ.
6. In my view it is clear that the judge erred in law in this case, not so much in relation to the factual findings but in the sense that those findings are to a large extent irrelevant. If, as is the case here, the appellants have residence cards issued by the Italian authorities that is on the basis of recognition that the sponsor was exercising Community rights in Italy. Akrich says that it does not matter that this was in a sense a device. Having those cards they have come to the United Kingdom, they satisfy the requirements in Akrich, they also satisfy the requirements of the Home Office policy for people entering the United Kingdom as holders of an Article 10 residence card and the consequence therefore is it seems to me there is no point in having a further hearing in this case. The appellants, in my view, satisfy the requirements of the law with regard to residence cards and therefore the decision refusing the residence cards is unlawful and the appeal against the refusal to issue residence cards is allowed.

### **Notice of Decision**

7. The appeal against the First-tier Judge's decision is therefore allowed.
8. No anonymity direction is made.



Signed

Date 7 December 2018

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Upper Tribunal Judge Allen