



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

Appeal Number: EA/06260/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2018**

**Decision & Reasons Promulgated
On 28 November 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS SAIRAN SALMAN SULAIMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mupara (instructed by Immigration Advisory Services (UK) Ltd (Derby))

For the Respondent: Ms L Kenny (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a decision of First-tier Tribunal Judge Griffith who heard her appeal at Taylor House on 21 May 2018. In a Decision and Reasons promulgated on 25 June 2018 she dismissed the appeal.
2. The appeal was by an Iraqi national claiming a right of residence as the family member (spouse) of a British citizen under Regulation 9 of the Immigration (EEA) Regulations 2016. The Appellant and her husband have

two children together, one born in 2016 in Eire, who has a British passport, and a second, born in the UK in February 2018.

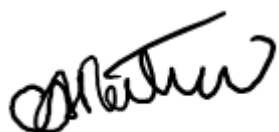
3. In her Decision and Reasons the Judge set out requirements of Regulation 9 and then set out the evidence. The evidence was that the British national came from Iraq to the UK in 1999 and obtained British nationality in 2007. He had been working in the UK as a waiter, then as a taxi driver and then as a barber in Margate. Thereafter, several of his friends moved to Ireland where they found well paid employment or started their own businesses. He decided that he would do likewise and left the UK for Ireland on 1 April 2014. Whilst there he rented a chair in a barber's shop and worked as a barber.
4. The Sponsor then travelled to Iraq and married his wife on 21 April 2014. His wife then joined him in Ireland and they lived together there where she gave birth to their first child. It is their case that the sponsor continued working in Ireland until the barber's shop, where he rented a chair, was sold late in 2015. Then, unable to find alternative employment, the family decided to come to the UK.
5. It was also claimed before the First-tier Tribunal that a factor in the decision to come to the UK was the Brexit situation. That was found by the First-tier Tribunal to be lacking credibility as they returned to the UK before the Brexit referendum. However, it is entirely credible that, having lost his chair at the barber's shop, the family would decide to come to the UK. Since they returned they have had another child.
6. The first issue the Judge looked at was whether the Sponsor was in truth working in Eire. She found that there was a paucity of evidence to establish that. She said that there was no evidence of tax being paid and found as a result that he had not been exercising Treaty rights in Ireland.
7. I have been taken to documents in the Appellant's bundle, the first of which is a letter from the Irish Naturalisation and Immigration Services dated 7 August 2015. That document related to an application by the Sponsor, submitted on 22 June 2015, for a residence card. That residence card was subsequently issued and it is clear from the document that one of the documents submitted with that application was a "Tax Return and Payment 2014" dated 18 May 2015. That related to the tax year ending December 2014. I was then taken to a tax document for the year ending December 2015; the Irish tax year runs with the calendar year. That document, a letter dated 25th February 2016, showed the Sponsor's self-assessment for the tax year ending December 2015. It is clear therefore that, for the tax years ending December 2014 and December 2015, the sponsor was working in Ireland and therefore exercising Treaty rights. A mere three months after that the family moved to the UK and during that time the sponsor was actively seeking another chair in another barber's shop. I therefore am satisfied that the conditions of Regulation 9(2)(a) were met in that the British citizen was residing in an EEA state, in this case Ireland as a worker or self-employed person or self-sufficient person

or student immediately before returning to the United Kingdom. The Judge, in failing to take account of the tax documents in the Appellant's bundle, made an error of law and her findings are not based on the evidence.

8. The second issue that the Judge had to consider was whether genuine family life was created or strengthened during their joint residence in the EEA state. The Judge indicated that the Appellant and Sponsor needed to show that they had moved the centre of their life to Ireland. In that she was wrong. The requirement is that the residence in the EEA state (Ireland) was genuine. Whether they have moved the centre of their life there is a factor that is capable of establishing that; it is not a free-standing requirement.
9. This is not a case of a family moving to Ireland for a very short period carrying out some minimal employment and then returning to the UK. This sponsor was in Ireland for a period before he married his wife and before she joined him. He was working there, their family life was certainly consolidated whilst there and I have no reason to doubt that their residence there was genuine. I find therefore that the Judge's finding in relation to the requirement for the centre of life to have transferred is wrong in law and the finding that the Sponsor was not exercising Treaty rights was unsustainable on the evidence. That means that the decision must be set aside. For the reasons I have already given about the evidence, his exercise of Treaty rights and the genuineness of their residence in Ireland I find that the Appellant does meet the requirements of Regulation 9 and therefore having set aside the First-tier Tribunal's decision, I re-decide it and allow the appeal.
10. The First-tier Tribunal did not make an anonymity direction and I see no reason to make one now.

Decision

The appeal to the Upper Tribunal is allowed.



Signed

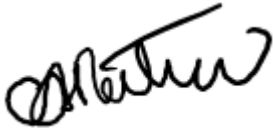
Date 21st November 2018

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or for the following reason.

I have allowed the appeal on the basis of evidence that was not before the Secretary of State.

A handwritten signature in black ink, appearing to read 'Martin', written in a cursive style.

Signed

Date 21st November 2018

Upper Tribunal Judge Martin