



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09073/2017

THE IMMIGRATION ACTS

Heard at Field House
On 20th September 2018

Decision & Reasons Promulgated
On 21st September 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MUMTAZ SAQIB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan (instructed by Archbold, Solicitors)
For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal with permission by the Appellant. The Appellant is a national of Pakistan and he had made an application to the Secretary of State for a residence card as the spouse which means as a family member of an EEA national exercising Treaty rights.
2. The sole reason that the Secretary of State refused the application, according to a fairly brief Refusal, is that it is said that the Secretary of State's official interviewed the EEA national's brother who supposedly told the interviewing officer that the Sponsor had left the country with no intention of returning. On that basis the Appellant was not exercising Treaty rights and therefore was not entitled to a residence card.

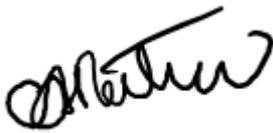
3. It is quite clear from the Refusal what the issue was, namely whether the spouse was exercising Treaty rights. The final paragraph on the first page of the Refusal specifically says that "as the EEA national is not exercising Treaty rights you currently have no entitlement under EEA Regulations." The issue therefore in the appeal was whether or not the Appellant's wife was exercising Treaty rights.
4. The Appellant had originally asked for an oral hearing but then decided that he preferred it to be dealt with on the papers. The Judge set out in paragraph 6 of his Decision and Reasons the considerable number of documents lodged in support of the appeal. A total of 35 separate documents are listed.
5. The Judge was not provided with a Respondent's bundle and therefore there was no evidence about the interview having taken place or what was said. The Judge was aware of that and he set out in the Decision and Reasons what the Appellant, his wife and the wife's brother said about that interview, namely that the official misunderstood what had been said and in fact what had been said was that she had left the country temporarily and was coming back. It is said that she was back by the time the appeal was determined.
6. The Judge noted in the Decision and Reasons that he was not helped by the absence of oral evidence. He therefore had to decide whether in fact the Sponsor was exercising Treaty rights. He did so by looking at the various documents and at paragraph 11 referred to a considerable amount of evidence showing the Sponsor had been in the UK and on a self-employed basis but also noted that the bank statements that he had, which were from May of 2017, were in summary form only. He also noted at paragraph 13 that the most recent independent documentary evidence that the Sponsor was exercising Treaty rights in the UK was her 2017 tax return, the December 2017 tax consultant's letter and a May 2017 bank statement.
7. He went on to say that he was given no itinerary explaining the travel of the Sponsor, the amount of time she had spent in or out of the UK and no evidence of a passport or by way of air tickets. He also said that he was given no evidence as to how much time the Sponsor had spent in the UK and no evidence that she was in the UK at all apart from what was asserted in her statement.
8. The grounds on which permission to appeal were granted firstly argue that the bank statements clearly showed cash going out of the Sponsor's account in the UK at the relevant period although no-one was able to take me to such a document. That ground therefore is not made out. The other main ground relied upon is that the Judge attached too much weight to the interview and he was not entitled to do so given that there was no evidence or interview record in front of him.
9. However, the Judge did not do that. He actually noted at paragraph 15 that, even without the allegation arising from the interview, there was a lack of corroboration about the current exercise of Treaty rights by the Sponsor. Having assessed all of the evidence the Judge came to the conclusion that the evidence was simply not there to show, on a balance of probabilities, that the Sponsor was exercising Treaty rights in the UK and thus the Appellant entitled to his residence card.

10. It was the Judge's task to decide whether she was exercising Treaty rights and the evidence was simply not there. Of course, it would have been a very simple matter, if in truth she is in the UK and exercising Treaty rights, for the Appellant, Sponsor and witness to have attended court and given evidence. They chose not to do so.
11. On the basis of the evidence in front of the Judge the result was inevitable and I find that there is no error of law in the Decision and Reasons in terms of the Judge's consideration of the EEA case. He in fact went on to consider Article 8, which he should not have done but that is wholly immaterial to the issue of whether or not the main determination should stand.

Notice of Decision

12. The First-tier Tribunal's Decision and Reasons is not tainted by a material of error of law and therefore the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.



Signed

Date 20th September 2018

Upper Tribunal Judge Martin