



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

Appeal Number: EA 13646 2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20 September 2018**

**Decision & Reasons
Promulgated
On 4 October 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**NARGUIS ZULAY HORSFORD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Trussler, counsel, instructed by Kinas solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is a resumed hearing. I have already given reasons for finding an error of law and setting aside the decision of the First-tier Tribunal. Those reasons are appended hereto. I ordered the matter came before me and gave directions.
2. This morning the parties have been able to consider the state of the law and the evidence available and agreed that the appeal should be allowed.
3. I allow the appeal pursuant to Rule 40(3)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The parties consented to me not giving written reasons. Suffice it to say that the appeal is allowed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 September 2018



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

Appeal Number: EA 13646 2016

THE IMMIGRATION ACTS

**Heard at Field House
On 13 June 2018**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**NARGUIS ZULAY HORSFORD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

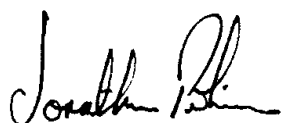
Representation:

For the Appellant: Mr J Trussler, Counsel instructed by Kinas Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

REASONS FOR FINDING ERROR OF LAW & DIRECTIONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the Secretary of State that she was not entitled to a residence card as the spouse of an EEA national who had been continuously enjoying treaty rights for five years in the United Kingdom.
2. It was the Secretary of State's case that the claimant had not shown that her partner, the EEA national, had been earning or otherwise exercising treaty rights throughout the relevant period. The First-tier Tribunal came to a different view. The First-tier Tribunal was entirely satisfied that the claimant's husband had been earning but found that the earnings had been dishonestly hidden from HMRC and for that reason could not be counted.

3. There are two difficulties with this.
4. First, whilst the judge should not be reluctant to find that the necessary income was not declared if that is what the evidence showed, the judge should not have reached the conclusion that the claimant's partner was acting dishonestly without putting her on notice so that she had opportunity of answering such a serious allegation. The grounds go some way to showing that the appellant might have an answer.
5. I am far from satisfied that the answer is necessarily sound but it is plainly arguable and the appellant, I am satisfied, is entitled to an opportunity to correct those findings that her husband has been dishonest.
6. The second problem is that I am not satisfied that the judge is right to conclude that the dishonesty concerning the appellant's taxation meant that the employment that was carried out cannot be relied upon for the purposes of establishing the exercise of treaty rights.
7. The judge has relied on two decisions which I have considered and found helpful but it is not clear to me presently that the kind of dishonesty alleged here, namely genuine work honestly undertaken but not declared properly to the Revenue for the purposes of taxation, means that the work should be disregarded. This is a point which, if the allegation of fraud made by the judge stands up to scrutiny, will become highly pertinent.
8. In all the circumstances I have decided that the proper place for disposing of this is in the Upper Tribunal.
9. This appeal will be listed for final determination in the Upper Tribunal before me if reasonably practicable.
10. I direct that no later than seven days before the day fixed for hearing the appellant serve on the respondent and the Tribunal all evidence on which she seeks to rely in support of the contention that the work that has been established was work on which appropriate tax was paid (if such be the case) and a skeleton argument from each party addressed to the question of whether work undertaken by the appellant's husband but not accounted for to the Revenue is work to be considered for the purpose of deciding if the appellant has established a right as the partner of a person exercising treaty rights.
11. It may be that I will eventually agree with the view taken by the First-tier Tribunal but at present I regard the point as arguable and I direct the parties to address their minds specifically to it.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 28 June 2018