



**Upper Tribunal
(Immigration and Asylum Chamber)**
EA/08551/2017

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
Promulgated
On: 13th December 2018**

**Decision & Reasons
On: 30th January 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Wahida Saddiqui

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Davison, Counsel instructed by the Sangat Advice Centre
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Afghanistan date of birth 24th September 1976. She appeals with permission the decision of the First-tier Tribunal (Judge Miles) to dismiss her appeal under the Immigration (European Economic Area) Regulations 2016.

2. This matter has been settled by consent so the background can be shortly stated.
3. The matter in issue before the First-tier Tribunal was whether Ms Saddiqui had a right of residence in the United Kingdom under the *Surinder Singh* route at Regulation 9 of the Regs. She asserted that she and her British family members had spent a period of time living in the Republic of Ireland where her husband and children had exercised treaty rights; the family had latterly relocated to the United Kingdom and she now wished to be granted residence under the Regulations.
4. The First-tier Tribunal rejected the Appellant's claim that she and her family had genuinely resided in EIRE. At paragraph 22 the determination says this:

“both the appellant and the sponsor asserted that they had integrated and that the children had attended school. However there is no documentary evidence in support of those assertions either in the form of letters from friends and acquaintances resident in Ireland or from educational establishments confirming the attendance of the children in the Irish education system”
5. As Mr Bramble agreed, this was a significant error of fact. The Appellant's bundle did contain the documentary evidence that the Tribunal found to be lacking, notably letters from the Presentation Primary School, Limerick, in respect of each of the Appellant's three children confirming that they had been enrolled at the school from 31st August 2015 to the date of writing on the 11th November 2016. The Respondent accepted that this error went to the heart of the question of whether the family had genuinely resided in Ireland and as such the decision should be set aside.
6. The parties agreed that in the circumstances (there remaining challenges to the Appellant's claim overall) the most appropriate forum for remaking would be the First-tier Tribunal.

Decisions

7. The decision of the First-tier Tribunal contain an error of law such that the decision is set aside.
8. The decision in the appeal is to be remade in the First-tier Tribunal
9. There is no order for anonymity.

Upper Tribunal Judge Bruce
13th December 2018