



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

Appeal Number: UI-2021-000450
EA/50579/2020
IA/01792/2020

THE IMMIGRATION ACTS

Decided on the papers

**Decision & Reasons Promulgated
On 2nd August 2022**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**RB (UKRAINE)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

**Order Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. This direction continues that which was made by the FtT on 9 July 2021. That direction was made, and continues to be appropriate, because the appellant has a pending asylum claim.

1. I have reached this decision without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I have done so upon the written invitation of the parties. I am satisfied that it is in the interests of justice to dispose of the appeal in that way.

2. By a decision dated 10 September 2021, First-tier Tribunal Judge Groom ("the judge") dismissed the appellant's appeal against the respondent's refusal to issue him with a residence card as the spouse of an EEA national. It was accepted by the judge, as it had been by the respondent, that the appellant's spouse was exercising Treaty Rights as a worker. The judge upheld the respondent's decision to refuse the residence card on grounds of public policy or public security, however.
3. The appellant initially sought permission to appeal on three grounds, each of which took issue with the judge's conclusion that the appellant represented a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. Following the decision of Upper Tribunal Judge Rintoul in Geci (EEA Regs: Transitional Provisions, appeal rights) [2021] UKUT 00285 (IAC), however, the appellant added a further ground of appeal which was founded upon that decision. Upper Tribunal Judge Lindsley subsequently granted unrestricted permission to appeal.
4. The respondent was invited by the applicant's solicitors to reconsider her stance in this appeal as a result of Geci. At 0935 on 16 June 2022, Mr Melvin of the respondent's Specialist Appeals Team sent an email to the Upper Tribunal in which he confirmed that the appeal 'should be allowed by consent on EU grounds' because the appeal 'is on all fours with Geci'. That email was copied to the appellant's solicitors.
5. Later on 16 June 2022, I caused an email to be sent to the appellant's solicitors, asking that they notify the Upper Tribunal whether they were content for the hearing to be vacated and for the appeal to be allowed on the basis suggested by the respondent. They confirmed by email at 1300 that they were content for the Upper Tribunal to proceed in that way. So it was that the parties were notified that the hearing was vacated and that the appeal would be allowed.
6. In view of the above, I propose merely to set out the judicial headnote in Geci and to state that I agree with Mr Melvin that this appeal is on all fours with that decision:
 - (1) *The Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") were revoked in their entirety on 31 December 2020 by paragraph 2(2) of Schedule 1(1) to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.*
 - (2) *Many of the provisions of the EEA Regulations are preserved (although subject to amendment) for the purpose of appeals pending as at 31 December 2020 by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations (SI 2020 1309), ("the EEA Transitional Regulations"). The preserved provisions and amendments made are set out in paragraphs 5 and 6 of Schedule 3 to the EEA Transitional Regulations.*
 - (3) *The effect of the amendments is that the sole ground of appeal is now, in effect, whether the decision under appeal*

breaches the appellant's rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020.

(4) The issue of a residence card is an administrative matter. Although the Secretary of State does have power under the EEA Regulations to refuse to issue a residence card on grounds of public policy, public security or public health, she does not have the right to do so under Directive 2004/38/EC or the EU Treaties.

6. The decision reached by the respondent in this matter was one that was available to her under the EEA Regulations but not under the EU Treaties. In the circumstances, the only proper decision which the FtT could have reached was that the decision breached the appellant's rights under the EU Treaties. The FtT was bound, therefore, to allow the appellant's appeal. It follows that the decision to dismiss the appeal must be set aside and that the Upper Tribunal is obliged to remake the decision, allowing the appeal on the only ground available to the appellant.

Notice of Decision

The decision of the FtT was erroneous in law and is set aside in full. The decision on the appeal is remade, allowing it on the basis that the decision breached the appellant's rights under the EU Treaties.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 June 2022