



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000452 & 3

First-tier Tribunal No:
EA/14149/2021, EA/02620/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20th of February 2024

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

between

SHAGUFTA SHAKER & TOOBA SHAKER

Appellants (in the FtT)

and

Secretary of State for the Home Department

Respondent (in the FtT)

For the Appellants: Mr H Ndubuisi, of Drummond Miller, Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Edinburgh on 30 November 2023

DECISION AND REASONS

1. We refer to parties as they were in the FtT.
2. The appellants are mother and daughter, citizens of Pakistan. They came to the UK as the EEA family members of a Swiss citizen, John Shaker, in 2011, and were granted permanent residence cards on 11 May 2017. The respondent narrates in the skeleton argument before us that permanent residence was revoked on 21 June 2018, because the sponsor had been stripped of his Swiss nationality on 18 October 2002. On 23 June 2021, the appellants applied for permanent residence under the EU Settlement Scheme (Appendix EU of the immigration rules; the "EUSS"), which the respondent refused on 10 February 2022. FtT Judge McGrade allowed their appeals against those refusals by a decision promulgated on 10 January 2023.

3. As recorded at [5] of the FtT's decision, the respondent's refusal of the first appellant's application did not refer to earlier revocation of permanent residence status, but was based on non-provision of proof of the relevant EEA citizen's identity and nationality in the form of a valid passport or valid national identity card. The refusal in the second appellant's case was based on insufficient evidence that she is the child of a relevant EEA citizen. It narrated that the first appellant's permanent residence card was revoked in May 2021, as was the permanent residence of the sponsor.
4. The appellants denied knowledge of revocation of their residence cards, prior to those refusals.
5. At the hearing, the respondent contended that both appellants had been served with notification, producing some file notes, mainly relating to John Shaker. The Judge held at [15] that none of those entries proved service. He was satisfied, for various reasons, that the appellants did not receive notification, did not know of withdrawal of their permanent residence, and otherwise would not have applied for settled status.
6. The Judge at [16] cited the Immigration Notices Regulations 2003: ...

Service of notice

7.—(1) A notice required to be given under regulation 4 may be—

- (a) given by hand;
- (b) sent by fax;
- (c) sent by postal service in which delivery or receipt is recorded to:-
 - (i) an address provided for correspondence by the person or his representative; or
 - (ii) where no address for correspondence has been provided by the person, the last-known or usual place of abode or place of business of the person or his representative.

(2) Where—

- (a) a person's whereabouts are not known; and
- (b) (i) no address has been provided for correspondence and the decision-maker does not know the last-known or usual place of abode or place of business of the person; or
- (ii) the address provided to the decision-maker is defective, false or no longer in use by the person; and
- (c) no representative appears to be acting for the person, the notice shall be deemed to have been given when the decision-maker enters a record of the above circumstances and places the signed notice on the relevant file.

(3) Where a notice has been given in accordance with paragraph (2) and then subsequently the person is located, he shall be given a copy of the notice and details of when and how it was given as soon as is practicable.

(4) Where a notice is sent by post in accordance with paragraph (1)(c) it shall be deemed to have been served, unless the contrary is proved,—

(a) on the second day after it was posted if it is sent to a place within the United Kingdom;

(b) on the twenty-eighth day after it was posted if it is sent to a place outside the United Kingdom.

(5) For the purposes of paragraph (4) the period is to be calculated—

(a) excluding the day on which the notice is posted; and

(b) in the case of paragraph (4)(a), excluding any day which is not a business day.

(6) In this regulation, “business day” means any day other than Saturday or Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971(9) in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.

(7) A notice given under regulation 4 may, in the case of a minor who does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

7. At [17 - 18] the Judge noted the absence of evidence of compliance with any of the alternative requirements for service therein, and was “not satisfied that on the balance of probabilities that the notice of revocation has been validly served on the appellants.” On the view that their permanent residence had not been revoked, he went on at [19 - 21] to find that they met the requirements of condition EU11 of Appendix EU.

8. The SSHD’s grounds of appeal are set out in her application dated 16 January 2023. Their terms are somewhat confused but they contend, in summary: ...

[2] the Judge was aware of the revocation of the sponsor’s Swiss citizenship in 2005, and failed to resolve the live issue of the sponsor’s citizenship at the time of the application or of the hearing;

[3] the Judge misdirected himself by “importing requirements from the immigration rules at [16] and applying them where no such statutory process has been infringed regarding the proper revocation of a permanent residence document under EEA regulation 24(4) and it is academic anyway as reg 19(4) means the document is invalid if the subject never held the right”;

[4-5] the Judge failed to note that the question was not the existence of a permanent residence card but the existence of the right; and

[6] “there is no suggestion that the Judge had before him” any confirmation of the sponsor’s Swiss citizenship since 2005.

9. FtT Judge Monaghan granted permission on 8 February 2023.

10. The rule 24 response for the appellants is also rather confused, but takes the following main lines:

the nationality of the sponsor was irrelevant; it was enough to have provided evidence when a right of permanent residence was documented; there was no need to show that he remained an EEA national thereafter;

The Immigration Notices Regulations do apply to EEA decisions;

the Judge adequately reasoned his finding that rights of permanent residence had not been revoked;

the appellants had placed before the Judge the genuine Swiss passport and identity cards of the sponsor valid from October 2005 to October 2015, postdating the “purported revocation” of his nationality; and

in that light, the SSHD had not discharged the burden of showing that he was not a Swiss citizen.

11. The SSHD’s skeleton argument to us advances the grounds in terms of 2 issues:

(i) failing to decide whether the sponsor’s Swiss citizenship had been revoked, in light of which no treaty rights had ever existed and residence cards had never been valid; and

(ii) incorrectly applying the immigration rules as to service of the revocation decisions under the EEA regulations.

12. Mr Lindsay’s submissions firstly took the line that the main issue should have been not whether the appellants knew about or were served with revocation notices, but whether they ever had any rights of residence. That did not depend on the existence of documents bearing to show such rights. The evidence was that there had not been a “relevant EEA citizen” to give rise to any rights of residence under the regulations or under the EUSS.

13. That line of argument is in line with authority and is plainly correct, as far as it goes. If the evidence was that the sponsor had not been a Swiss citizen at the time entry clearance was first granted, or when the applications leading to these proceedings were made, the decision of the FtT would fall to be reversed. The appellants’ first line of argument, to the contrary effect, is hopeless.

14. What emerged, rather laboriously, in course of submissions and on reference to the documents which were before the FtT, however, is quite different.

15. The SSHD’s grounds are entirely misleading in saying that there was not before the Judge any confirmation of the sponsor’s Swiss citizenship since

2005. The appellants' last line in response, based on the Swiss passport and identity cards of the sponsor, valid from October 2005 to October 2015, being before the FtT, is accurate.

16. At page 220 of 346 of the bundle before us is a copy, in English, with no information about translation, of a ruling on 24 June 2005 of the "Federal Court, Appeal Court, Civil Division II" in which John Shaker is the appellant and the Swiss Justice & Police Dept is the other party, refusing an appeal against nullification of a naturalisation order.
17. At page 115 there is a copy of the Swiss passport of John Shaker, issued on 26 October 2005, valid until 25 October 2015. At page 120-1 there is a copy of his Swiss identity document valid from 27 October 2005 to 26 October 2015 (along with a copy of his UK driving licence, valid until 13 December 2022).
18. The submission of the presenting officer to the FtT, as recorded at [20], was that there was "no valid EEA national connected to the appellants' applications"; but there does not appear to have been any submission on how, on considering the foregoing documentation, the Judge might uphold that.
19. Mr Ndubuisi firstly submitted that it did not matter if the sponsor was ever an EEA citizen, but, as we have said above, that is quite wrong as a matter of law. In the alternative, Mr Ndubuisi said that the FtT, at least implicitly, held that he was.
20. The furthest the FtT seems to have gone is at [21], finding it enough that the appellants were "entitled to rely upon the fact that they were family members of a relevant EEA citizen in the past". However, there was undisputed documentation of citizenship before the tribunal, post-dating the "nullification of naturalisation". As to the effect of that, and as to subsequent procedure and events with the Swiss authorities, there was no evidence. We do not see that the tribunal might rationally have reached any conclusion from the evidence before it other than that the sponsor was an EEA citizen throughout the period relevant to these appeals.
21. Despite the misconceptions of both sides, both about the evidence and about the law, that disposes of the SSHD's first line of challenge.
22. The second line of challenge is also poorly taken. The relevant provisions for service of notices are not in the "immigration rules". The Judge was right to consult the Immigration Notices Regulations 2003. There was no importation of incorrect requirements.
23. Mr Lindsay's final point to us was that the FtT was wrong to find that notices had not been validly served, because the indications were that they went out to the appellants' last address on record, from where they had moved, and to representatives, who were no longer acting for them.

There had been no service “to file” in terms of regulation 7(2) but all that regulation 7(1)(c) required was that the notices be “sent”.

24. We doubt whether that point is sufficiently foreshadowed in the grounds on which permission was granted. In any event, we are not persuaded of its merit.
25. The regulations appear to us to reflect a general expectation that a party to an application or proceedings should keep the respondent up to date with details of address and of any representatives. That is extinguished once the application or proceedings are no longer live. It is readily understandable that provisions are made for an alternative process when no address or representative is known. We would be reluctant, within that scheme, to find that where the SSHD does not follow the fall-back procedure for service “to file” it is enough merely for the notice to have been sent.
26. The best evidence offered to the FtT appears to have been some case notes relating not directly to the appellants but to the sponsor, mentioned at [12 - 14]. There was then a submission, recorded at [18], that he should accept (i) that documents had been sent by recorded delivery, simply because that was asserted to be normal practice at the time, and (ii) that they were not returned, because regulation 7(2) had not been followed. In that void of evidence, we do not consider that there was any error by the FtT in not being satisfied of valid service, even if all that was required was for the documents to be sent.
27. On the two issues raised by the SSHD:
 - (i) there was nothing before the FtT by which it might rationally have found that the appellants’ sponsor was not an EEA citizen at all relevant times; and
 - (ii) there was no error in its finding that notices had not been validly served on the appellants.
28. The SSHD’s appeal to the UT is dismissed. The decision of the FtT stands.
29. No order for anonymity has been requested or made.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 December 2023