



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

Appeal Number: EA/04431/2016  
EA/04427/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 January 2018**

**Decision and**

**Promulgated**

**On 19 January 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**DALJIT [S]**

**[S K]**

**(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellants: Mr J Gajjar (counsel for M-R Solicitors)

For the Respondent: Mr S Kotas (Senior Presenting Officer)

**DECISION AND REASONS**

1. These proceedings challenge the decision of the First-tier Tribunal of 19 September 2017 to *partially* allow the appeal of Daljit [S] (albeit dismissing the appeal of his daughter [SK], born [ ] 2014), the appeals below having originally been brought against the refusal of residence cards by a decision of the Secretary of State of 30 March 2016.

2. Daljit [S] arrived in the UK in October 2004 and claimed asylum on 2 February 2011. He met [SD], a Lithuanian national, and they married on 6 October 2011. He was granted a residence card as her family member. Their relationship deteriorated and they divorced.
3. Daljit [S] claimed to have retained the right of residence under the EEA Regulations given he had been married to [SD] from October 2011 until their divorce on 16 June 2015. The application was refused because he had not demonstrated that his Sponsor was exercising Treaty Rights up to that date, having provided evidence only up to 5 May 2015, and he had not shown that he himself had been working as claimed, having failed to provide evidence of his work from June 2015 onwards.
4. Furthermore, when invited for interview, a number of inconsistencies and concerns were identified in his evidence, leading to the marriage being treated as one of convenience. Accordingly the application was refused, and the logic of that reasoning was extended to revoking the original residence card he had been issued on the basis of the marriage having previously been treated as genuine.
5. The First-tier Tribunal heard evidence from Daljit [S], and accepted the argument put on his behalf that the interview transcript was not reliable given it comprised only a summary rather than a verbatim record of the underlying questions and answers. Daljit [S] contended it was not a true or complete reflection of the answers he had given, and given that the Presenting Officer who appeared below was unable to provide a full copy of the original record, and acknowledged the difficulty in which this placed her, the First-tier Tribunal found the Secretary of State had not discharged the burden of proof on her to establish that the relationship was a marriage of convenience.
6. The First-tier Tribunal found that [SK] did not qualify for a residence card given the Regulations made no provision for a minor daughter of a former spouse to retain their right of residence. It accordingly allowed Daljit [S]'s appeal to the extent that it found the Secretary of State had been wrong to revoke the issue of a residence card; however it made no ruling as to whether his *application* for a new residence card, on retained rights of residence grounds, should have succeeded.
7. Daljit [S] lodged grounds of appeal to the Upper Tribunal against that decision, on the basis that it represented only a partial adjudication of the relevant issues: in fact the refusal of the residence card acknowledging his retained right of residence had been challenged in the original grounds lodged to the First-tier Tribunal against the EEA decision.

## Findings and reasons

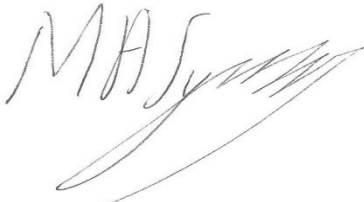
8. Before me the parties were agreed that there was a material error of law in the decision below. Having heard their submissions, I find myself in agreement with their position.
9. The EEA decisions against which a right of appeal lies are identified as including the revocation and the refusal of a residence card (Reg 2 of The Immigration (European Economic Area) Regulations 2016). The appeal form in this particular case plainly raised an objection to both those features of the Home Office decision, as both aspects of the decision are clearly challenged by the grounds of appeal.
10. Each issue was therefore before the First-tier Tribunal and it should not have treated the matter of the application's refusal as beyond its jurisdiction. The basis on which it allowed Daljit [S]'s appeal against revocation inevitably carried over to the appeal against his application's refusal.
11. No issue was raised as to the correctness of the First-tier Tribunal's treatment of his daughter's EEA claim, and so her appeal stands as dismissed.
12. I accordingly find that there was a material error of law in the decision of the First-tier Tribunal. For the decision of the First-tier Tribunal allowing Daljit [S]'s appeal against the revocation of a residence card, I substitute a decision
  - (a) Allowing Daljit [S]'s appeal against the revocation of a residence card  
*and*
  - (b) Allowing Daljit [S]'s appeal against the refusal of his application for a residence card, and thus recognising that he is owed the extended right of residence (via the retained right of residence).
13. The decision to dismiss [SK]'s appeal remains undisturbed.

Decision:

The appeal of Daljit [S] is allowed. That of [SK] remains dismissed.

Signed:

Date: 3 January 2018

A handwritten signature in black ink, appearing to read 'M.A. Symes'. The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Deputy Upper Tribunal Judge Symes