



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/04897/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2017**

**Determination & Reasons
Promulgated
On 12 February 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

MR ANVARJON AHMEDOV

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hone, Counsel, instructed by LS Legal Immigration Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Uzbekistan. On 6 November 2015, he made an application for a residence card as confirmation of his right to reside in the UK as the spouse and family member of Ella Simonova, a national of Estonia and thereby an EEA national. That was refused by the respondent. His appeal came before Judge Austin of the First tier

Tribunal who dismissed it on the papers without a hearing on 25 January 2017. He was successful in obtaining permission to appeal and in a decision sent on 23 October 2017 Deputy Upper Tribunal Judge Chapman set aside the decision of Judge Austin for material error or law. DUTJ Chapman held that Judge Austin had not applied the correct test when assessing whether the sponsor's employment was genuine and effective. DUTJ Chapman made several directions aimed at obtaining further particulars from the appellant regarding tax and national insurance records relating to his sponsor.

2. By the time the case came before me in order to re-make the decision, the appellant had submitted, albeit somewhat late, further documentation relating to the sponsor's employment. Through Mr Hone the appellant sought an adjournment because his sponsor had had to go to Estonia to visit her sick grandmother. This application dovetailed with the Home Office Presenting Officer, Mr Tarlow's, request which was for more time to check the latest employment documentation which had been provided late in the day. I granted the joint application with an oral direction that Mr Tarlow submit within 7 days the Home Office response to the new documentary evidence, noting that it may well be that this response would obviate the need for a further hearing.

3. On 18 December 2017 Mr Tarlow duly sent a letter to the Upper Tribunal stating that the Secretary of State had had opportunity to examine the additional evidence provided in the form of copy payslips pertaining to the sponsor's claimed employment during the relevant period. The letter concluded:

"For the Secretary of State, I accept that the evidence shows that the sponsor was economically active and exercising treaty rights. In the light of this I would ask that the tribunal determine this appeal without a further hearing."

4. Having regard to the above response from Mr Tarlow on behalf of the Secretary of State, I am in a position to re-make the decision in this appeal by allowing the appellant's appeal against the decision of the respondent refusing him a residence card as the spouse of an EEA national exercising Treaty rights. The respondent no longer raises any dispute to the factual basis for the appellant's right to reside based on his relationship as the family member of a spouse exercising Treaty rights.

5. For the above reasons:-

The decision of the First-tier Tribunal judge has already been set aside for material error of law.

The decision I re-make is to allow the appellant's appeal.

A handwritten signature in black ink, consisting of the letters 'H H' followed by a stylized cursive name that appears to be 'Storey'.

Signed

Date: 7 February 2018

Judge of the Upper Tribunal