



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/05130/2017**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 2 May 2018**

**Decision  
Promulgated  
On 9 May 2018**

**& Reasons**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MS SUJITRA POOLSUP  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Thailand. Her date of birth is 24 January 1988.
2. The appellant made an application for a residence card under the Immigration (European Economic Area) Regulations 2006 ("2006 Regulations") on 30 November 2016. The application was refused by the respondent on 15 May 2017 because the appellant had not provided evidence that she was the family member of a person exercising treaty rights.

*The decision of the FtT*

3. The appellant appealed. Her appeal was dismissed by First-tier Tribunal Judge T. Thorne in a decision promulgated on 1 August 2017, following a hearing on 12 July 2017. The appeal was determined on the papers at the request of the appellant. The judge found that the EEA national was exercising family rights, but dismissed the appeal because he found that the appellant had not established that she was a family member of the EEA sponsor.
4. First-tier Tribunal Judge O'Brien granted permission to the appellant on 1 February 2018.

*The grounds of appeal*

5. The grounds argue that the judge dismissed the appeal on a ground that was not raised as an issue by the respondent. It was accepted by the respondent that the appellant was a family member of the EEA national, in this case her husband.

*The error of law*

6. Mr Bramble conceded that the judge materially erred for the reason raised in the grounds. The decision to dismiss the appeal on this basis was not open to the judge. This is a material error of law and the decision to dismiss the appeal is set aside. The respondent accepted that the appellant was a family member of the EEA national. The issue was whether the EEA national was exercising treaty rights and on this issue the judge found in the appellant's favour. It follows that the judge should have allowed the appeal. I remake the appeal and allow it under the 2006 Regulations.
7. The appeal is allowed under the 2006 Regulations.

Signed

Date 2 May 2018

**Joanna McWilliam**

Upper Tribunal Judge McWilliam