



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07027/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17 August 2018

Decision and Reasons Promulgated
On 10 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

Ramdeen

and

Applicant

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr R. Roberts, Counsel, instructed by MediVisas UK LLP

For the respondent: Mr T. Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal has had an unfortunate history. As I said when the matter first came before me on 15 May 2018, the First-tier Tribunal Judge, understandably, concluded that the appellant had no right of appeal against a decision made by the Secretary of State that the appellant was not an extended family member of a Lithuanian national exercising Treaty rights in the United Kingdom. The application was properly considered under Reg. 8 of the Immigration (European Economic Area) Regulations 2006. As the refusal

letter makes plain, the application made on 11 December 2015 was on the basis that the applicant was an unmarried partner who, as an extended family member, did not have the same automatic right to live and work in the United Kingdom in the same way as direct family members. Only direct family members had an automatic right to join, live with or accompany a Union citizen who is herself exercising free movement rights.

2. The First-tier Tribunal Judge was wrong in finding that there was no right of appeal but that only became apparent in light of the decision of the Court of Appeal in *Khan v the Secretary of State for the Home Department* [2017] EWCA Civ 755. Accordingly, I set aside the determination of the First-tier Tribunal.
3. The matter came before me on 17 August 2018 at which point I was informed that the appellant was married to his former partner, [KV], on 26 July 2018.
4. The appellant's wife attended the hearing. They have been living together for some time and their daughter was born on 24 November 2014. Although I was provided with photocopies of the original certificates of birth and marriage, I have no reason to doubt the authenticity of the originals.
5. Mr Roberts, who appeared on behalf of the appellant, relied upon the marriage in support of the appeal. However, the appeal follows a decision in relation to the appellant's application as an extended family member. That decision is no longer a material one. No application has been made under Reg. 7 of the 2016 Regulations on the basis that the appellant is the spouse of a Union citizen exercising Treaty rights. The respondent has never been asked to make such a decision. There is no appeal against a refusal to grant the appellant a residence card as a spouse. I am not permitted to allow an appeal on the basis of an application that has not been made.
6. I have no reason to doubt that the appellant and his wife are genuinely married and that the marriage is not one of convenience. However, that is not a decision that should be made by me without permitting the Secretary of State to consider the documents put forward by the appellant in support of an application as a spouse.
7. The appellant is no longer an extended family member of his former partner. He is her husband. Decisions made under the 2006 Regulations speak from the date of my decision. As the appellant is, as far as I am aware and on the basis of the documents he himself has submitted, no longer an extended family member of a Union citizen exercising Treaty rights, his appeal on that basis cannot now succeed.
8. Accordingly, the appeal is dismissed. In doing so, whilst I am not able to verify the marriage, I have no reason to doubt that it is valid. In so far as I am able, there is nothing before me to indicate that the appellant would not be granted a residence card on the basis of his marriage. I am not, however, permitted to pre-empt the Secretary of State in reaching his own decision.

DECISION

- (i) The appellant is not an extended family member of his wife, [KV].
- (ii) The appeal against the decision of the Secretary of State refusing to grant him a residence card in recognition of his being an extended family member is accordingly dismissed.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
4 September 2018