



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

Appeal Number: EA/07177/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**Decision & Reasons**

**On 22 October 2018**

**Promulgated**

**On 29 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**[M C]**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Dr Mynott, instructed by Broudie Jackson Canter Solicitors

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Canada. She is married to a British citizen ('the sponsor'). She has appealed against a decision of the First-tier Tribunal ('FTT') dismissing her appeal against the respondent's decision dated 7 August 2018, refusing her application for residence card on the basis that she was a family member of a British citizen who has exercised his Treaty rights by genuinely living in Ireland, an EEA state, on the basis of the principles established in R v IAT and Surinder Singh (C-370/90) [1992] ECR I-04265.

2. At the hearing before me Mr McVeety conceded that the FTT made material errors of law, such that its decision should be set aside and remitted to the FTT. I indicated at the hearing that Mr McVeety was entirely correct to make the concession he did and I can therefore set my reasons out briefly. The FTT failed to take the following material evidence into account:
  - (i) The appellant was granted a family permit by an entry clearance officer on 11 October 2016, following an application to be admitted to the UK on the basis of the Surinder Singh principles. As Mr McVeety observed this was important because it demonstrated that the respondent was prepared to accept that certain aspects of regulation 9 of the relevant EEA Regulations were met as at the date of the family permit, which preceded the residence card application by mere months. Both representatives observed that it was very rare to find a case in which a Surinder Singh-issued family permit was followed by a refusal of a residence card based on the same Surinder Singh route. Indeed, neither of these experienced representatives had ever come across such a case.
  - (ii) There was written evidence from the sponsor's former employer to confirm his evidence that he was offered his post in Ireland very quickly in June 2015, having been head-hunted for the position.
3. Further, contrary to the FTT's indication at [11(vi)], the appellant did not enter the UK as a visitor but denied a visitor visa and only permitted temporary admission, rendering it more plausible that she was prepared to move to Ireland with such haste - the family were unable to remain as a family unit in the UK.
4. This failure to take into account material evidence renders the FTT's reasons for finding that the sponsor did not genuinely reside in Ireland unsafe. Fresh findings of fact are required. Given the likely extent of the fact-finding process and bearing in mind para 7.2 of the relevant *Senior President's Practice Statement*, I have decided that this is an appropriate case to remit to the FTT.

### **Decision**

5. The FTT decision contains an error of law and is set aside. The decision shall be remade by the FTT.

### **Directions**

- (1) The respondent shall reconsider the appellant's case and provide an updated position statement within 14 days of today's date.
- (2) The matter will then be case managed by the FTT.

Signed  
*M. Plimmer*

Dated  
22 October 2018

Melanie Plimmer  
Judge of the Upper Tribunal