



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

Appeal Number: EA/05241/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 20 August 2019**

**Decision & Reasons Promulgated
On 09 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SULTAN AHMED KASHIF
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alef, Solicitor from NR Legal Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal to dismiss the appeal of the appellant against a decision of the respondent on 10 July 2018 to refuse him a residence card under the Immigration (European Economic Area) Regulations 2016.
2. The appellant applied for a residence card as the husband of a British citizen who he said was to be treated as an EEA national because she was

exercising treaty rights in the Republic of Ireland. The application was refused because, according to the respondent:

“Having considered all of the evidence and information provided in support of your application, and applying the civil standard of the balance of probabilities, it is considered that the purpose of your residence in the EEA host country was as a means for circumventing the UK’s domestic Immigration Rules or other immigration law”.

3. I consider carefully the decision of the First-tier Tribunal. This noted that the appellant entered the United Kingdom in June 2011. His leave was extended and then curtailed to end on 9 December 2013 but he remained in the United Kingdom for some time. He applied for a residence card under the EEA Regulations on 15 March 2018. The evidence before the First-tier Tribunal was that the appellant married his sponsor, a British citizen originally from Pakistan, in June 2014. The marriage was conducted by proxy. The appellant remained in the United Kingdom, apparently without permission, and his sponsor went to Pakistan for a wedding ceremony.
4. The First-tier Tribunal summarised the appellant’s case as follows:

“The appellant’s case is that the sponsor, who has never been in business before and whose sole employment experience had been to work in a shop many years ago and more recently to work in a takeaway, decided to move to the Republic of Ireland and run a business called S.N. IT Solutions Ltd which she had purchased for €15,000. The appellant and sponsor claim that they lived in the Republic of Ireland between May 2016 and September 2017. The business made a loss. The sponsor says that she worked delivering leaflets for an employer called JD Marketing between April and August 2017. In September 2017 the sponsor and appellant decided to return to the United Kingdom because the sponsor was suffering from depression. They say they meet the requirements of Regulation 9 of the EEA Regulations”.
5. The sponsor produced evidence to show she was the director of a company. However, there were no accounts produced for the company and no indication that tax returns were filed or any evidence of business activity. When the sponsor gave evidence she was unable to explain what the business did. She had no evidence that she had employed anyone. The company had no bank account but, according to the sponsor, was able to receive money and pay bills and pay its employees.
6. There is a letter in the bundle purporting to come from the company saying that the sponsor was employed as a housekeeper. The sponsor said that she is the sole owner of the company and sole director. She did not know if she had written the letter. She also claimed to have worked for a company called JD Marketing delivering leaflets and produced some wage slips to support that claim but she was paid in cash and there was no record of payment into a bank account. The appellant had produced bank statements for the period 18 January 2016 to 31 August 2017 but there

were no transactions until December 2016 and only one payment into the account and bank charges. There was no evidence there of salary or income from employment. There was a tenancy agreement dated 17 May 2016 but it was not registered with the Residential Tenancies Board until 17 February 2017 and there was no evidence there of a single payment of rent in the bank statements for the whole period of May through to September 2017 when the appellant and sponsor say they were resident in the Republic of Ireland.

7. This led the First-tier Tribunal Judge to conclude as follows:

“In any event I am satisfied that the purpose of the residence of the appellant and sponsor in the Republic of Ireland was to circumvent the provisions of the Immigration Rules. The appellant’s immigration history indicates a determination to stay in the United Kingdom after his leave expired. The sponsor was not earning sufficient to enable the appellant to enter the United Kingdom under the Immigration Rules. There is no other reason why the sponsor should have gone to the Republic of Ireland. She had no connections with that country. The company she acquired did not appear to have been trading. She had not gone there for the sake of employment. I am not satisfied that the sponsor was in the Republic of Ireland before December 2016 when activity started on her bank account. What the sponsor has done is to acquire a company to give the impression that she was trading and then spent a few months in the Republic of Ireland. As soon as possible the appellant and sponsor returned to the United Kingdom”.

8. The grounds of appeal to the First-tier Tribunal are not professionally drawn. They are rich in criticism but light on substance. The First-tier Tribunal refused permission to appeal. Permission was granted by the Upper Tribunal. The Deputy Judge’s reasons for giving permission were set out in paragraph 3 of her decision where she said:

“... It is arguable that the judge materially erred in failing to take into consideration or make findings in respect of the correspondence from the Irish Tax and Customs Revenue at pages 43 to 56 of the appellant’s bundle, which states that the sponsor was liable to pay €980 and in arrears in respect of this sum on 31.5.17, which would indicate that she had engaged in some sort of employment or business whilst resident in Ireland. Whilst, in itself, this is insufficient to show that the centre of the sponsor’s life had been transferred to the Republic of Ireland, it is clearly a material consideration in respect of any assessment of that issue”.

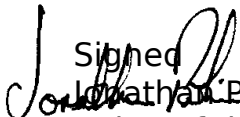
9. The point behind this is that it might be the case that the sponsor was economically active in the Republic of Ireland and was exercising treaty rights even if she had been incomplete or even untruthful in other parts of her evidence and decisions about her reasons for being in the Republic of Ireland should have been made against the background of what she was actually doing. I follow that argument. However, Ms Aboni pointed out a significant problem. I have reflected on the letter dated 6 June identifying the appellant’s wife as a housekeeper. It is evidence that she was paying tax in Ireland and therefore it tends to suggest that she was exercising

treaty rights by working. However no explanation is given to explain the obligation to pay tax and without some explanation I do not see how much weight can be given to it. I have considered the letter from the Office of the Revenue Commissioners in the Republic of Ireland indicating a payment due on 6 June 2017 but this refers to the period 01 January 2015 to 31 December 2015. Paragraph 5 of the appellant's wife's statement refers to her starting work in Ireland and buying a company on 19 May 2016. It is not clear why she should be paying any tax for the year ending 31 December 2015.

10. I have considered the submissions and the grounds such as they are, and particularly the Deputy Judge's grant of permission, but I can see no material fault in this decision. The judge had reached a conclusion plainly open to him on the evidence and I dismiss the appeal.
11. I note that the appellant and her husband attended before me although they were not expected to give evidence. I note that it was said in submissions that they are not educated people. I understand that they may well want to live together and find it hard to satisfy the Rules but I am quite unpersuaded that there is anything wrong with the judge's decision that they do not satisfy the requirements for admission under the Regulations.

Notice of Decision

12. I find no material error of law and I dismiss the appeal against the First-tier Tribunal's decision.


Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 October 2019