



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

Appeal Number: EA/06425/2016

THE IMMIGRATION ACTS

Heard at Field House

**On 21 March 2019
(judgment delivered extempore)**

**Decision & Reasons
Promulgated
On 16 April 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**SUMBUL FAYYAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull
For the Respondent: Mr I Jarvis

DECISION AND REASONS

1. This is the appeal of Sumbul Fayyaz, a Pakistani citizen born in September 1985. She appeals against a decision by the Secretary of State to refuse to issue her with a residence card as an extended family member who has been dependent in the UK upon an EEA national sponsor and continues to be so. The date of the decision is 16 May 2016.
2. There had been a previous application for a residence card on the same basis in 2014. That application was refused in November 2014 and her appeal against that decision was dismissed by First-tier Tribunal Judge Mozolowski on 24 April 2015. Her application to appeal that decision to the Upper Tribunal was refused and a judicial review application was

refused. I assume that that was a Cart challenge, although I do not think that I have a copy of those papers before me but nothing turns on that.

3. The application that led to the current proceedings was made in November 2015. There was a delay in her appeal against the refusal being heard because of the litigation surrounding the issue of whether or not extended family members had a right of appeal. It was eventually resolved that they did have a right of appeal under the 2006 Regulations and her appeal was heard before First-tier Tribunal Judge Talbot on 7 January 2019. He dismissed that appeal for reasons set out in a decision dated 24 January 2019.
4. The appellant was granted permission to appeal. The grounds upon which permission was granted do not actually address the fundamental issue in this case which is that although it was accepted by Judge Mozolowski that the appellant and Mr Shahbaz, her sponsor, had been living in the same household since January 2014; it was not accepted that Mr Shahbaz was exercising treaty rights at that time. Judge Mozolowski found that Mr Shabaz had not been exercising treaty rights until May that year.
5. Judge Talbot very properly set out the oral evidence that he heard. Both the appellant and her sponsor, Mr Shahbaz, confirmed there was no further evidence lodged that went to that decision by Judge Mozolowski. The judge set out the requirements in **Devaseelan** where a judge is considering previous decisions by a Tribunal and the extent to which he is required to take those into account. The previous findings of a judge are, in the absence of any evidence that goes to those findings, to be considered settled and clear.
6. The findings of Judge Mozolowski were clear and settled, that she had not been dependent on her sponsor whilst her sponsor was exercising treaty rights. Both had given evidence that there was nothing in their evidence that was significantly different from that which they had previously claimed, and Judge Talbot therefore stated in the final paragraph of his decision that he found that the evidence before him does not establish either that the appellant was financially dependent on Mr Shahbaz in Pakistan, or that she has been either part of his household or financially dependent on him ever since her arrival in the UK. That of course is part of his household or financially dependent on him as an EEA national exercising treaty rights.
7. Although the decision is short and succinct, there was no need for Judge Talbot to refer to the disagreement that the appellant has over the Secretary of State's assertion that she has submitted false documents. She may well have a sustainable argument that the documents were not false and there may well be evidence in her documentation that can support that contention, but that is not the issue in the proceedings either before me or before Judge Talbot. Judge Talbot made a proper, reasoned and correct decision that there was no evidence before him to dislodge or undermine the findings of Judge Mozolowski which were that the appellant was not either living in the same household or financially dependent upon

her uncle whilst he was exercising treaty rights in the UK. For those reasons the decision by Judge Talbot does not disclose an error of law and I dismiss the appeal of Miss Fayyaz.

Conclusion

There is no error of law in the decision of the First-tier Tribunal and the appeal is dismissed.

Signed 

Date 13th April 2019

Upper Tribunal Judge Coker