



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

Appeal Number: EA/09727/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2018**

**Decision & Reasons
Promulgated
On 18 January 2019**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

BUSHRA FARHANA

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A De Ruano, Legal Representative of Goodfellows Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is the wife of a British citizen, Mr [AT]. The marriage took place in Pakistan in 2013. Her husband returned to the United Kingdom and she remained in Pakistan where she was caring for her parents. In July 2014 the sponsor moved to Ireland and in March 2016 the appellant obtained entry clearance to join him there. In August 2016 they moved to the United Kingdom.
2. On 11 April 2017 the appellant applied for a residence card as a family member of a British citizen who has exercised treaty rights in Ireland.

3. In a decision dated 22 November 2017, the respondent refused that application for reason of Regulation 9 of the Immigration (EEA) Regulations 2006. The respondent was not satisfied that the sponsor had genuinely exercised treaty rights in another EU member state in accordance with that Regulation.
4. It was noted that the appellant had entered Ireland on 17 March 2016 with her two children and that the family had left Ireland in October 2016.
5. It was the case advanced by the sponsor that the reason that he had gone to Ireland was to develop a business. In a detailed decision the respondent analysed the nature of the evidence presented about such an occupation. The respondent found the documentation to be undermining of credibility and in part to be contradictory.
6. It was also noted that in a birth certificate the sponsor described himself as a cab driver but no evidence whatsoever of that occupation was presented.
7. The evidence presented as to accommodation and residence was also found to be unsatisfactory for the reasons as set out in the decision. It is not accepted that the documents as presented were indeed credible or that much weight could be placed upon them.
8. In essence it was the view of the respondent that the presence in Ireland was not genuine but rather was part of a process to enable the appellant to claim rights of residence in the United Kingdom.
9. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Widdup for hearing on 14 August 2018. In a determination dated 28 August 2018 the appeal was dismissed.
10. The appellant sought to challenge that decision and leave to do so was granted on 26 September 2018. Thus the matter comes before me to determine the issues.
11. In essence it is submitted on behalf of the appellant that the Judge has failed to give due weight to the length of residence in Ireland namely from July 2014 to October 2016, he has failed to appreciate that the appellant herself lived in Ireland for some six months. It was submitted that the Judge failed to consider Regulation 9 within that context.
12. It is a requirement set out in Regulation 9 that the appellant and sponsor should have resided together in the EEA state and that such residence was genuine the factors which are relevant to whether a residence is or was genuine include:-
 - (a) whether the centre of sponsor's life transferred to the EEA state;

- (b) the length of the sponsor and appellant's joint residence in that state;
 - (c) the nature and quality of the appellant and sponsor's accommodation in the state in the way that it is or was the sponsor's principal residence;
 - (d) the degree of the appellant and sponsor's integration in the EEA state;
 - (e) whether the appellant's first lawful residence in the EU with the sponsor was in the EEA state.
13. Consideration had to be given as to whether the purpose of the residence in the EEA state was as a means of circumventing any Immigration Rules applying to non-EEA nationals to which the appellant would otherwise be subject.
14. The reason given by the sponsor for moving to Ireland is set out in his witness statement of 2 August 2018, namely he identified a business opportunity with a friend of his, a Mr [TA] that was to start a catering business. He indicated in the statement that whilst he was in Ireland he registered himself on a self-employed basis and started a business of catering providing cooked food to the customers for their functions and parties. He said that he was able to earn reasonable earnings from the business. Later he was to say that demand for his business began to fall by prompting his return to the United Kingdom upon an offer of employment there.
15. The sponsor was asked if he had any invoices in relation to his catering business and he said that they were not with him. In terms of the accounts submitted by the accountant, these showed a profit in 2014 as €2,915 and in 2015 €4,500 and in December 2016 €1,900. The sponsor agreed that his family could not survive on those amounts particularly when his rent was €900 per month. He agreed when asked about the accounts that were submitted that the figures did not match the figures that he had given.
16. It was the finding of the Judge that the sponsor had provided inconsistent evidence about his earnings in Ireland and failed to produce invoices in relation to his work. This of course is of particular significance given the detailed challenges that were set out in the refusal decision but seemingly had not been addressed.
17. Further complications seem to have arisen in that in the birth certificate of his daughter the sponsor described his occupation as a minicab driver. His daughter had been born on 26 December 2016 at a time when the sponsor and appellant were clearly back in the United Kingdom. The sponsor denied that he had worked in that capacity. The Judge found however that his statement that he had undermined his credibility generally.
18. If the main reason for the sponsor having gone to Ireland was to establish his business, it is perhaps significant and undermining of his credibility in

that regard, that he failed to produce the requisite evidence that he was so employed.

19. In terms of his residence that also was the subject of challenge. He asserted that he had lived at [~] Fearann Ri for the period. He was referred to documents in the respondent's bundle showing that he lived at three addresses in that road. He said that the same landlord owned those properties and sometimes he would be asked to move to one of the others. Once again he had not brought the tenancy agreements to court although the nature of his accommodation had been the subject of challenge in the decision letter.
20. As Ms Isherwood submits, there was a marked lack of any detail as to any integration into society or anything to indicate that when the appellant joined the sponsor in Ireland that it was then the intention that they live in Ireland rather than elsewhere.
21. I note, so far as the appellant is concerned, that her statement is very brief indeed. It is recorded in the determination that the appellant also indicated that she intended living in the United Kingdom. The Judge found on that basis that it was not her intention to establish family life in Ireland but rather to live in the United Kingdom. It was relevant in that context that the application for settlement in the United Kingdom otherwise than through the EEA Regulations would not have succeeded. The Judge having considered the evidence that was presented did not find it to indicate any degree of commitment to living in Ireland and there was little evidence of any integration in that country.
22. The grounds of appeal cite a number of documents showing the sponsor lived in Ireland during that period and that when the appellant joined him they lived together. Whilst documentation is in the bundle and it is clear that the Judge had made reference to that documentation but gave it little weight in determining the relevant issues as to a genuineness of occupation for the reasons that are set out.
23. For the most part the grounds seek to challenge the conclusions of the Judge.
24. In practical terms this was a sponsor and appellant who had been alerted to the concerns of the respondent in relation to Regulation 9 in a decision in that they were represented at the hearing almost one year later. It is not unreasonable of the Judge to have expected some clarity in the evidence that was presented relevant to the issues which were highlighted in the appeal.
25. Given the paucity of evidence as to what the sponsor was doing in the significant period before the appellant joined him indeed the absence of evidence as to the lifestyle and activity of the appellant and sponsor whilst in Ireland, I find that it was properly open to the Judge in the assessment

of the factual situation and having regard to the overall context to have come to the conclusions that were arrived at.

26. In granting permission to appeal the First-tier Tribunal Judge had identified the case of **O and B v Minister voor Immigratie, Integratie en Asiel (Directive 2004/38/EC - Article 21(1) TFEU) Case C-456/12** of that noted that the scope of Union law could not be extended to cover abuses. Proof of such abuse required a combination of objective circumstances in which, despite formal observance of the conditions laid down by the European Union Rules, the purpose of those Rules has not been achieved and secondly, a subjective element consisting the intention to obtain an advantage from the European Union Rules by artificially creating the conditions laid down for obtaining it.
27. It was the clear view of the Judge supported by reasons that the purpose of the sponsor moving to Ireland was precisely to artificially create a situation in which the EEA rights could indeed extend to him and his family. Indeed it would also seem on the basis of the Judge's findings that the sponsor was not exercising treaty rights in Ireland in any event or to any significant extent so as to create or exercise any such rights.
28. In all the circumstances therefore the appeal before the Upper Tribunal is dismissed.

Notice of Decision

The appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand namely that the appeal of the appellant stands dismissed under the EEA Regulations.

No anonymity direction is made.

Signed

Date 17 Dec 2018



Upper Tribunal Judge King TD