



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

Appeal Number: IA/05549/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> June 2013**

**Determination**

**Promulgated**

**On 4<sup>th</sup> July 2013**

**Before**

**UPPER TRIBUNAL JUDGE RENTON**

**Between**

**MUSAMMAT NOYAN TARA BEGUM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Bangladesh born on 4<sup>th</sup> March 1974. On 31<sup>st</sup> October 2012 she applied for a residence card as confirmation of her right to reside in the UK. She applied on the basis that she was the spouse of an EEA national exercising treaty rights in the UK. That

application was refused for the reasons given in a Refusal Letter dated 12<sup>th</sup> February 2013. The Appellant appealed, and her appeal was decided without a hearing by Judge of the First-tier Tribunal M Davies (the Judge) on 15<sup>th</sup> April 2013. He decided to allow the appeal for the reasons given in his Determination dated 23<sup>rd</sup> April 2013. The Respondent applied for leave to appeal that decision, and on 10<sup>th</sup> May 2013 such permission was granted.

2. At the hearing before me there was no appearance by or on behalf of the Appellant. I decided to hear the appeal in her absence in accordance with the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was apparent from the Appellant's letter to the Tribunal dated 28<sup>th</sup> May 2013 that she had received the notice of hearing and was happy for the appeal to be determined in her absence.

### **Error of Law**

3. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
4. The Respondent refused the Appellant's application for a residence card under the provisions of Regulation 6 of the Immigration (European Economic Area) Regulations 2006. This was because the Respondent was not satisfied that the Appellant's spouse at the relevant time was exercising treaty rights in the UK by being in employment. This decision was made on the basis that when a telephone call was made to the Bombay Balti House an employee stated that there was no employee there of the name of Faruque Ahmed, the name of the Appellant's spouse.
5. The Judge allowed the appeal because he was satisfied that the Appellant's spouse was employed at the Bombay Balti House as claimed. The Judge decided to attach more weight to the documentary evidence of Faruque Ahmed's employment than the contents of a telephone conversation.
6. At the hearing, Ms Everett was content to rely upon the grounds seeking leave which she considered did not need amplification. Those grounds are that in paragraph 10 of the Determination the Judge made an error when referring to the Appellant's employment instead of the employment of the Appellant's husband. Further, the Judge gave insufficient reasons for his finding that at the relevant time the Appellant's husband was in employment, referring to additional evidence which was not specified.
7. I find no error of law in the decision of the Judge. His reference to the Appellant's employment and not the employment of her husband is immaterial as it is clear from the Determination, and as the Judge later stated, that it was the employment of the Appellant's husband upon which he made a finding.

8. It may be the case that the Judge has not explained in sufficient detail upon what evidence he came to his conclusion concerning the employment of the Appellant's husband. However, again this is not a material error of law because it is evident from the documentary evidence submitted by the Appellant prior to the hearing before the Judge that her husband was in employment at the relevant time. For example, there is a P60 form, a wage slip, and a confirmatory letter from the Bombay Balti House dated 29<sup>th</sup> October 2012. This evidence is preferable to that contained in a telephone conversation with a person who had no responsibility for the workings of the Bombay Balti House.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**

The first-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I see no reason to make one now.

Signed

Date

Upper Tribunal Judge Renton