



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10325/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29 October 2013

Determination Promulgated
On 21 November 2013

Before

UPPER TRIBUNAL JUDGE PITT

Between

HINA AYUB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan and her date of birth is 28 July 1983.
2. The appellant appeals against the decision of First-tier Tribunal Judge White who in a determination of 18 June 2013 refused her appeal against the respondent's decision


dated 14 March 2013 to issue her with a Residence Card as a family member of an EEA national exercising Treaty rights.

3. In a Rule 24 letter dated 15 August 2013 the respondent indicated that the appeal was not opposed. It was accepted that the appellant had submitted additional documents for the appeal hearing but that First-tier Tribunal Judge White was not provided with them.
4. Although no criticism attaches to First-tier Tribunal Judge White, when he stated at [13] that the appellant had not provided further evidence in support of appeal, that was factually incorrect and materially so.
5. I therefore found that the decision of the First-tier Tribunal disclosed an error on a point of law such that it should be set aside and re-made. I proceeded to re-make the appeal.
6. The appellant did not attend, nor did her husband and she was not represented. In a letter faxed to the Tribunal on 28 October 2013 the appellant stated that she would not be attending as she was unwell and that she wanted the case to be heard in her absence. The appellant did not provide any evidence concerning any ill-health. There was also nothing to indicate why her husband, whose work status is at the heart of this appeal, was not able to attend.
7. It was my view that it was possible for me to proceed as the appellant clearly had notice of the hearing and the appeal could be heard fairly and justly without an adjournment being required.
8. I heard submissions from Mr Wilding. He maintained that the evidence provided by the appellant with her application and later for the appeal was not, even in combination, sufficient to show that the appellant's husband was exercising Treaty rights. Where that was so the husband could not be considered to be a qualified person under Regulation 6 of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). The appellant was therefore not entitled to a residence card as she was not a family member of an EEA national exercising Treaty rights as required under Regulation 7 of the EEA Regulations.
9. Given that the appellant was not represented and did not attend the hearing before me, I considered the evidence that she provided in support of her case with great care.
10. A great deal of what has been submitted to show that the appellant's husband is a self-employed cleaner is founded solely on information provided by the husband. This is so for the letters and profit and loss accounts from Raza & Co, a firm of accountants. There is nothing from HMRC to show that the self-declaration of earnings in the tax return for the year 2011 to 2012 of the husband was accepted as accurate.

11. The appellant also provided an undated statement from her husband. As indicated above, Mr Rimvydas did not attend to confirm his statement and I placed less weight on the statement as a result. Where his employment status was the sole and central to the appeal and there was no explanation for his decision not to attend the hearing, I found that this further reduced the weight that I could place on his statement and on the documentary evidence that was based on information provided by him.
12. The bank statements of the appellant and her husband do not show any payments specifically relating to the husband's work, just payments of varying amounts into the accounts from time to time.
13. The appellant also provided five invoices from April and May 2013 for cleaning work her husband had done. Those invoices are very basic, identical in format and could have been prepared on any computer. There is nothing from any of the clients named to confirm the contents of the invoices. It was not clear to me why, if the appellant's husband has been working in this manner from 2010, there were only five invoices from April and May 2013 to confirm his work.
14. In summary, I did not find that the documents before me were sufficient to show that the appellant's husband has been exercising Treaty rights and was therefore a qualified person under Regulation 6 of the EEA Regulations. The appellant cannot qualify for a Residence Card in line with Regulation 7, therefore and I dismissed the appeal.

Decision

15. The decision of the First-tier Tribunal disclosed an error on a point of law such that it is set aside. I re-make the appeal by dismissing it.

Signed: 
Upper Tribunal Judge Pitt

Date: 14 November 2013