



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

Appeal Number: IA/10991/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 4<sup>th</sup> December 2014**

**Determination Promulgated  
On 17<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS MEGAN ELIZABETH HUDSON  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R J W Hudson, Sponsor

For the Respondent: Mr A McVeety, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of the United States of America born on 21<sup>st</sup> January 1984. The Appellant applied for a residence card as confirmation of a right of residence as the family member of a British citizen who was previously working or self-employed in another Member State pursuant to Regulation 9(2)(a) and (b). The Appellant's application was refused on 18<sup>th</sup> February 2014 on the basis that there was no evidence that the British citizen was working or self-employed in another Member State prior to coming to the United Kingdom and that no evidence had been supplied

that the Appellant herself was resident in another Member State prior to coming to the United Kingdom.

2. The Appellant appealed and the appeal came before Immigration Judge JDL Edwards sitting at Manchester on 4<sup>th</sup> July 2014. In a determination promulgated on 9<sup>th</sup> July 2014 the Appellant's appeal under the 2006 EEA Regulations was allowed.
3. The Appellant's immigration history was that she had been issued with entry clearance as a student on 1<sup>st</sup> January 2005 valid until 1<sup>st</sup> April 2008. She then applied for a visit visa on 14<sup>th</sup> July 2009 which was issued and expired on 14<sup>th</sup> January 2010. She applied for entry clearance on a visit to marry on 19<sup>th</sup> September 2011 which expired on 19<sup>th</sup> March 2013 and she was then issued with entry clearance as a family member on 17<sup>th</sup> October 2013 which expired on 17<sup>th</sup> April 2014. However prior to that expiry she had applied for a residence card in November 2013 and it was this application that was refused and is the subject of this appeal.
4. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 16<sup>th</sup> July 2014. The grounds are succinct. They state:

"The First-tier Tribunal Judge failed to adequately reason the finding that the Appellant's husband was working in France. Simply because the yacht operated out of France does not make or lead to the conclusion that the person is working in France, especially when it is registered in the British Virgin Islands. There is also no finding as to whom the Appellant's Sponsor paid tax. This finding is important in respect of where the Sponsor was domiciled and the payment of tax to the respective country."
5. On 3<sup>rd</sup> September 2014 First-tier Tribunal Judge Andrew granted permission to appeal. It is on that basis that the appeal comes before me. For the purpose of continuity in these proceedings be it that this is an appeal by the Secretary of State Mrs Hudson is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by her husband and Sponsor Mr Robin Hudson. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety.
6. The grounds generally complain that the First-tier Tribunal Judge failed to give adequate reasons as to his finding that the Appellant's husband was working in France. It is apparent from the bundle of documents lodged before the First-tier Tribunal that the Appellant's husband was working on a yacht registered in St Vincent and the Grenadines operating in the western Mediterranean and based in Port Canto, Cannes, France. The Sponsor's contract of employment is with Dominion Crew Solutions (Jersey) Ltd. The Sponsor's payslips show that he is paid in euros although there is nothing therein to show in which country he pays tax. The Grounds of Appeal concentrate on the fact that none of these issues were referred to by the judge in his determination.
7. Albeit that I am determining whether or not there is a material error of law in the decision of the First-tier Tribunal Judge an up-to-date bundle has been lodged by the Sponsor. That bundle contains documents to show that Mr Robin Hudson was

working abroad, that he was residing in France aboard a seafaring vessel. He set out to confirm that the Sponsor was paid in euros for contracted work aboard the vessel. They also provided documents of a UK tenancy agreement to show their dedication to a stable home life and land based commitment to the United Kingdom.

### **Submissions/Discussions**

8. Mr McVeety goes no further than to rely on the succinct Grounds of Appeal pointing out that this is a very complex case as to whether or not the Appellant meets the EEA Regulation. The Secretary of State accepts the Sponsor is a British citizen and accepts that the Appellant is married to the British citizen. Mr McVeety on the Secretary of State's behalf equates the position that the Sponsor found himself in to that of merchant seaman and the question to be answered is whether or not under the EEA Regulations an offshore worker qualify under the Regulations.
9. Mr Hudson explains his position. He was on a short term employment for six months working on a luxury yacht which was based in Cannes and provided day trips to St Tropez and to Monaco. He acknowledges that his employers were a company based in Jersey and he accepts Mr McVeety's statement that Jersey is not part of the United Kingdom but a Crown dependency. He further acknowledges he was paid in euros but that tax was not deducted

### **The Law**

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

12. It is clear the judge made material errors of law in his determination in what is a complex issue in that he failed to give due consideration to any findings that the Appellant's husband was working in France, as to his terms of his contract of employment and as to how and where he is paid along with any tax implications. I acknowledge that a failure to make such findings can be material so far as it relates to findings under the EEA Regulation. I consequently set aside the decision and proceeded to remake it.
13. The Regulation:
9. (1) *If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a United Kingdom national as if the United Kingdom national were an EEA national.*
- (2) *The conditions are that –*
- (a) *the United Kingdom national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom; and*
- (b) *if the family member of the United Kingdom national is his spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in that State before the United Kingdom national returned to the United Kingdom.*

## Findings

14. Having had the benefit of hearing both the Appellant and the Sponsor a full and detailed explanation as to the employment that was undertaken it is clear whilst the Sponsor was working on day cruises he was resident in France it would be impossible to conclude that he was resident anywhere else. It was not as if the boat were on a long term voyage into the Mediterranean. The boat was, on his testimony, carrying out predominantly day cruises to Monaco and to St Tropez. Consequently I am satisfied that the Appellant was working in Europe for the purpose of the Regulations. Further whilst noting that his employers was a company based in Jersey and that the boat was registered out of the British Virgin Islands the fact remains he was resident in France and that he was paid in euros. It is a matter of no consequence as to where he pays his tax. For the purpose of the Regulation the Appellant is a family member of a United Kingdom national working in an EEA State and was so doing prior to returning with the UK national to the United Kingdom. The Appellant subsequently satisfies Regulation 9 of the Immigration (European Economic Area) Regulations 2006.
15. I am advised by both the Appellant and the Sponsor that they have now returned on a permanent basis to the United Kingdom and that they are settling down to what only can be described as a less exotic and more mundane way of life in North Wales. I further note that it is their wish to travel to the United States this Christmas to visit family members of the Appellant. Whilst there was a reason why they would not be

able to leave the United Kingdom I acknowledged without the relevant visa it would be difficult for the Appellant to return. They would be ill-advised to make the trip without the visa being in place. This was one of those unusual cases where an extemporaneous judgment was provided prior to the written judgment and Mr McVeety on behalf of the Secretary of State indicated that he would be taking steps to notify the relevant authorities that the visa should be expedited as a matter of considerable urgency. I hope this can take place.

## **Decision**

16. The decision of the First-tier Tribunal Judge contained a material error of law and for the reasons given above is set aside. The decision is thereafter remade allowing the Appellant's appeal under the Immigration (European Economic Area) Regulations 2006.
17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date **16<sup>th</sup> December 2014**

Deputy Upper Tribunal Judge D N Harris