



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20312/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 7th October 2014

Determination Promulgated
On 16th October 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

BINYAMIN BINYAMIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua of Janjua & Associates
For the Respondent: Mrs Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Grimshaw made following a hearing at Bradford on 4th August 2014.

Background

2. The Appellant is a citizen of Pakistan born on 28th December 1975. He appealed against the decision of the Respondent, made on 29th April 2014, to refuse to grant him a residence card as confirmation of his right of residence as a family member of an EEA national who was residing in an EEA State as a worker or self-employed person before returning to the UK.
3. Regulation 9 sets out the conditions which are to be satisfied for the issuing of a residence card. The conditions are that –
 - (a) P is residing in an EEA state as a worker or self-employed person or was so residing before returning to the UK;
 - (b) If the family member of P is P's 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 the EEA state before the British citizen returned to the UK; and
 - (c) The centre of P's life has transferred to the EEA state where P resided as a worker or self-employed person.

Factors relevant to whether the centre of P's life has transferred to another EEA state include –

- (d) The period of residence in the EEA state as a worker or self-employed person;
 - (e) The location of P's principal residence;
 - (f) The degree of integration of P in the EEA state.
4. The Respondent did not accept that the EEA national Sponsor had been working as a self-employed whilst residing in Ireland. The couple had lived outside the UK for less than a year and had no family or financial ties or property owned in Ireland.
5. The Judge found the evidence to be discrepant. She accepted that the couple had arrived in Ireland on 30th May 2013 but was unclear as to why a tenancy agreement had been signed five days later since she was told that for the first four weeks they were living with relatives. The Sponsor had claimed to have arranged rented accommodation only after she started work as a cleaner in July 2013. Moreover, the Appellant had said that he and his wife had no intention of settling there and did not plan to do so until two weeks after the date of their arrival.
6. Mrs Parveen's evidence of her work activity was wholly unpersuasive. Her start dates were inconsistent with each other. The letter from the accountant said that she started trading on 8th July 2013 and ceased trading on 19th December 2013, a period of less than six months. There were no invoices or receipts nor any evidence of a tax return.

7. The Judge said that she was aware that the authorities in Ireland had issued a residence certificate based on the claim that the Appellant's wife was economically active. It seemed that they were content to do so on the basis of the tenancy agreement together with confirmation from the accountant that he was acting as her tax agent and a letter from his saying that her expected turnover was likely to be €15,000. However, by the date of the letter, she had ceased trading two months earlier with a recorded profit of only £2,430 and had been economically inactive thereafter.
8. Moreover there was no persuasive evidence to show that either the Appellant nor his wife had integrated into the local community in Ireland or had any real attachments to the country. They had come for a holiday on 30th May 2013 and neither had visited the country previously. The total time there spanned less than a year and the claimed period of self-employment was even shorter.
9. She concluded that Mrs Parveen was not meaningfully engaged as a self-employed person within the meaning of Regulation 9 whilst resident in another EEA state.

The grounds of application

10. The Appellant sought permission to appeal on the grounds that the judge's decision was against the weight of evidence. The Appellant had been issued with a five year residence card in Ireland as the spouse of a British citizen exercising EU treaty rights. During the eight month period of stay the Appellant's wife had moved the centre of her residence to Ireland and had no house or employment commitments in the UK. Neither did she claim any benefits during that period. When she registered herself as self-employed there her intention was to live there for an indefinite period. She had produced evidence of her residence such as a tenancy agreement, an accountant's letter, utility bills, bank statements, etc. The oral evidence was very clear and there were no inconsistencies in the statements.
11. Permission to appeal was granted by Judge Mailer for the reasons stated in the grounds on 2nd September 2014.

Submissions

12. Mr Janjua relied on his grounds and repeated that there was clear evidence before the Judge which should have enabled her to find in his favour. He recited the documentary evidence which she had produced and submitted that the Judge had erred in law by failing to provide proper reasons for her decision.
13. Mrs Pettersen submitted that the grounds did not challenge the negative credibility findings. The Judge properly took into account all of the evidence before her and reached a decision open to her.

Findings and Conclusions

14. There is no error of law in this decision. The grounds amount to a mere disagreement with it and are an attempt to re-argue the case.
15. The Judge analysed all of the documentary evidence and reached proper conclusions open to her. She outlined the discrepancies in the oral evidence. The Appellant's wife had been in Ireland for a relatively short period of time. The evidence of meaningful employment was scanty.
16. She bore in mind the fact that a residence certificate had been issued by the authorities in Ireland but was clear as to why she herself had come to a different conclusion.
17. No error is disclosed in either the grounds or the submissions.

Decision

18. The Judge's decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor