



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

Appeal Number: DA/00934/2014

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 2nd November 2015**

**Decision and Reasons Promulgated
On 5th November 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SAMI DAJQI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Notice of hearing was sent to the appellant through his solicitors on 20th October 2015. By fax dated 26th October 2015 the solicitors notified the Tribunal that they were no longer instructed by the appellant and they provided an address for him. Their letter stated they had been unable to obtain instructions. There is nothing to indicate that the solicitors did not, given they are on the record, notify the appellant of the hearing date. The appeal proceeded.

2. FtT judge Ransley granted the appellant permission to appeal a decision of First-tier Tribunal Judge Callow sitting at Taylor House dismissing his appeal against a decision of the respondent refusing to revoke a deportation order made on 13th September 2007. The FtT dismissed the appeal on asylum and human rights grounds. The FtT also dismissed the appeal on the grounds that he was not entitled to an EEA family permit.
3. Permission had not been sought to appeal the human rights or asylum grounds. Permission had been sought solely on the ground that the FtT judge had erred in law in finding that the appellant did not come within the *Surinder Singh* principle because he was not married to his partner.
4. Although the appellant had not specifically applied for a residence card as an EEA national in a durable relationship, the respondent in the decision the subject of appeal had taken account of his claim that he was in a durable relationship with a British Citizen who had allegedly been exercising Treaty Rights in Belgium whilst they had been living there as a couple and that they had then returned to the UK as a couple where she claimed to be continuing to exercise her Treaty Rights, thus falling within the *Surinder Singh* principle.
5. The decision the subject of the appeal stated:

44. You have stated that your client's partner, Ms Caton, worked as a hairdresser in Belgium from May to September 2011, exercising her right to free movement pursuant to Directive 2004/39/EC, and as such your client has a right to reside in the UK as her family member. Your client cannot benefit from the EEA regulations as, firstly, there is no evidence provided to show that his partner did work during her time in Belgium. It is also considered that as an unmarried partner your client cannot benefit from these regulations as he has not acquired an EEA Residence Card.

6. The FtT judge held

16. On a balance of probabilities it has been established in the round that they [the appellant and Ms Caton] are in a subsisting and genuine relationship and that this relationship has endured the vicissitudes of the appellant's circumstances and conduct over the years. Notwithstanding the lack of documentary evidence it is accepted that the parties lived together in Belgium for about five months and that the partner worked as a hairdresser earning cash in hand....

...

24.Furthermore it has not been established that he [the appellant] meets the requirements of reg 9(2) and (3). Accordingly reg 9 does not avail the appellant to an initial right of residence as provided for in reg 13. The claim that the appellant should be issued with an EEA family permit fails.

7. In her Rule 24 response dated 11th March 2015 to the grant of permission the respondent states

The failure to consider Kamila Santos is not a material error because the appellant has failed to establish that his British partner was exercising treaty rights in Belgium. The judge found against them on Reg 9(2) on this very point, for the record, there was no concession by the SSHD regarding this point at [44] RFL it was stated

Further the fact that the appellant is claiming to be an extended family member of an EEA national (through an extension of the *Surinder Singh* principle) would not have led the

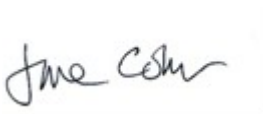
appeal against revocation of a deport to be allowed. The appellant is only entitled to a residence card only at the SSHD's discretion under Reg 17(4) not as a matter of law, his claimed status as an OFM is not such a material change of circumstances as to compel the revocation of the deportation order.

8. The appellant through his solicitors did not reply to the Rule 24 response and no request to admit further evidence under rule 15(2) Procedure Rules was made.
9. There was no evidence before the FtT that the appellant's partner was exercising treaty rights in Belgium. The respondent had not accepted that she was exercising such rights. It appears likely the FtT judge omitted the word "not" in [16] of his determination given [44] of the respondent's reasons for refusing to revoke the deportation order and the finding by the FtT judge in [24] that he does not meet the requirements of regulation 9(2) or 9(3). Even if it is not a typographical error in [16] it is plain that the finding in [23] is sustainable given the lack of any documentary evidence that the appellant's partner is working either in the UK or in Belgium and given the reference to the lack of evidence in [44] of the decision by the respondent.
10. The *Surinder Singh* principle was not, on the evidence before the FtT, engaged and even if it were, and the appellant could show that he was an extended family member, that would merely lead to the respondent considering whether to issue a residence card. It would not result in a successful appeal against a decision refusing to revoke a deportation order.
11. No other grounds being relied upon by the appellant, there is no identifiable error of law in the decision of the FtT to dismiss the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision is set aside.

The decision of the First-tier Tribunal stands.



Date 3rd November 2015

Upper Tribunal Judge Coker