



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

Appeal Number: IA/09161/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2015**

**Determination
Promulgated
On 20 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS BABELJIT KAUR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy
For the Respondent: Mr Williams

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal on 1st October 2014 to allow the appellant's appeal against the decision of the respondent that she did not qualify for a residence card under the EEA regulations. The decision, which followed a hearing on 22 September 2014, was on the basis that to deny the

appellant a residence card would have the effect of forcing the appellant to leave the UK with a consequent disruptive effect on the family.

2. I sympathise with the position that Immigration Judge Taylor found himself in, particularly since the effect of refusing the appellant a residence card was perceived to be that the appellant's partner may have to stop work so he could look after their children. However, on the balance of probabilities, his decision was not in accordance with those regulations.

Arguments before the Upper Tribunal

3. The appellant's position has been fully outlined by her solicitor Mr Duffy, as will be explained below. He has pointed out that the basis on which the case has been argued for the Secretary of State before the Upper Tribunal was not, effectively, the basis on which it was argued before the First-tier Tribunal. Nevertheless, the grounds of appeal by the Secretary of State were thought by Judge of the First-tier Tribunal Nicholson to be a seriously arguable. In particular, Judge Nicholson thought it clearly arguable that the Secretary of State had correctly construed the relevant Regulation of the EEA Regulations 2006 (the EEA Regulations). Regulation 15A of the EEA Regulations required the appellant not merely to show that her children would be unable to reside in the UK if the appellant left the UK but also that they would not be able to live in another EEA state.

Discussion

4. Regulation 15A requires that P, the relevant British citizen, who I will refer to as the Applicant", must be the primary carer of a British citizen. That clearly was satisfied as the Immigration Judge found. Secondly, it had to be shown that the Applicant was residing in the United Kingdom. There was also no dispute about that. The third requirement was that the relevant British citizen would be unable to reside in the UK or in another EEA state if P were required to leave. That requirement was not met by the appellant in these circumstances. The appellant resided with her husband, Mr Singh. He was living in the same household and was able to care for his children. The guidance notes, although they do not have the status of law, do illuminate the particular Regulation by indicating that where there is another direct relative who can care for the British citizen, or citizens in this case, that will be sufficient to establish that the relevant Regulation cannot apply
4. This case does not turn on the judge's assessment of credibility or on the judge's assessment of the case more generally but on the strict application of the relevant Regulations to the circumstances as found. Therefore, with some hesitation, having regard to my obligation to apply the law to the facts of the case I have concluded that the Immigration Judge did not construe Regulation 15A correctly. In particular, Regulation 15A (4A)(c) requires the appellant to show that the relevant British citizen (i.e. the sponsor here) would be unable to reside in the UK or in another

EEA state if the appellant were required to leave. That requirement clearly was not met. In those circumstances the Secretary of State appears to me to have been justified in refusing the residence card that was sought by the applicant under the relevant EEA Regulations.

Conclusions

5. The appeal is properly brought and I will allow the Secretary of State's appeal against the decision of the First-tier Tribunal on the basis that there was a material error of law.
6. I substitute my decision which is that on the application of the Regulations to the facts of the case the appellant does not to satisfy the requirements of 15A (4A).
7. As a postscript to that finding I should express the clear view that if an application were to be made under Appendix FM or indeed as a freestanding Article 8 claim that would appear to me to have a reasonable prospect of success given that the appellant is the primary carer of the child. The findings of the Immigration Judge including those in relation to the care provided by the appellant for her children shall stand. I hope that in due course the correct application is made. No doubt it will receive full consideration by the Secretary of State.

Notice of Decision

The appeal by the Secretary of State is allowed. I substitute the decision of this Tribunal to refuse a residence card.

No anonymity direction is made.

Signed

Date **9 January 2015**

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **9 January 2015**

Deputy Upper Tribunal Judge Hanbury