



IAC-AH-SC-V4

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

Appeal Number: IA/12927/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29th September 2015**

**Decision & Reasons Promulgated
On 21st October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS ASIYA IRFAN MUGHAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timpson of Counsel

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

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 26th February 1972. The Appellant claimed to have entered the United Kingdom twelve years and ten months prior to the date of her EEA4 application. On 8th December 2013 she was issued with a residence card and on 30th December 2013 she sought a permanent residence card.
2. The Secretary of State issued a Notice of Refusal on 28th February 2014. The Secretary of State noted that the Appellant has applied as the non-European Economic Area

national family member of Irfan Majid Mughal, a German national, who claimed to have exercised treaty rights for a continuous period of five years in the United Kingdom in accordance with the Immigration (EEA) Regulations 2006. The Notice of Refusal considered that the Appellant had provided insufficient evidence of her EEA family member's current economic activity in the United Kingdom and therefore concluded that the Appellant had failed to provide sufficient evidence to demonstrate that the Appellant's EEA family member was economically active in the United Kingdom as a self-employed person as detailed under Regulation 6 of the 2006 Regulations for a continuous period of five years. Consequently the application was refused with reference to Regulation 15(1)(b) of the Immigration (EEA) Regulations 2006.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Herwald sitting at Manchester on 23rd July 2014. In a determination promulgated on 13th August 2014 Judge Herwald dismissed the Appellant's appeal.
4. On 22nd August 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 26th September 2014 First-tier Tribunal Judge Grimmett granted permission to appeal. Judge Grimmett noted that the application to appeal asserted that the judge had erred due to a lack of proper reasoning. As the judge had accepted the Appellant's evidence that the Sponsor was a self-employed businessman in the UK (paragraph 22) as set out in her witness statement, but did not accept the Sponsor's evidence that he was a self-employed businessman (paragraph 27), Judge Grimmett considered that it was arguable that there was a lack of reasoning in the determination.
5. On 13th October 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response stated that the First-tier Tribunal Judge was entitled to conclude that the Sponsor was not self-employed and hence did not meet the requirements of Regulation 6. They contend that as set out at paragraph 26 of the determination there was clearly no evidence before the judge to show that the Sponsor was self-employed. It was submitted that the Sponsor may well be receiving working tax credit and child tax credit, however it was not known what documents were submitted to the Department of Work and Pensions to enable him to make such claims and to receive those benefits. The Rule 24 response pointed out that the Appellant was put on notice by way of the refusal letter that there was insufficient evidence of the Sponsor's current economic activities in the UK and that at the appeal there was a paucity of evidence. The Secretary of State contended that it was obvious from the determination that the First-tier Tribunal Judge did not accept that the Sponsor was exercising treaty rights in the UK and submitted that there was no ambiguity or contradiction in the determination.
6. This appeal first came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The issue in this matter is narrow and highly technical. It was the contention of both sides that if the Sponsor is found to be self-employed and exercising therefore his treaty rights that the appeal should succeed. It was the contention of Mr Timpson that at paragraph 22 of the

determination the judge accepted the Appellant's evidence and the assertion of the Sponsor to the effect that he has earned no more than £7,546 in total over the past five years. He stated that that cannot sit with the finding at paragraph 27 that the Appellant is pursuing activity as a self-employed person.

7. I agreed that those two findings did not sit well together. It is for the Appellant however to show that he is exercising treaty rights and the Appellant and his legal representatives were well aware of the very strong challenges that were made to the Sponsor's self-employment status as set out both in the Notice of Refusal and in Judge Herwald's determination. In the interests of justice bearing in mind the contradiction to be found in the First-tier Tribunal Judge's determination and the fact that both legal representatives urged me that there may well be considerable merit in the rehearing of this matter bearing in mind there is no decided authority as to what constitutes self-employment and that the guidance of the Upper Tribunal would be useful I set aside the decision of the First-tier Tribunal, reserved the matter to myself and set out directions for the rehearing of this matter.
8. The matter reappeared before me on 17th March 2015. Documentary evidence in support of the contentions on behalf of the Appellant had been served late and the Secretary of State required time to consider them. In the interests of justice I agreed an adjournment and gave appropriate directions for the restored hearing of this matter. It is on that basis that the appeal comes back before me. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety and the Appellant by her instructed Counsel Mr Timpson. Both legal representatives have considerable experience of this matter having attended before me when I found there was a material error of law.
9. I am considerably assisted in this matter by the concession now made by Mr McVeety on behalf of the Secretary of State that the documents produced particularly within the bundles dated 6th March 2015 and the bundle following the subsequent directions of 8th April 2015 of the Secretary of State's acceptance that the Appellant's Sponsor, is a German citizen exercising his treaty rights in the UK and is self-employed and trading as Mughal Autos.

Findings

10. I have had the opportunity to give due consideration to the documents produced in particular the witness statement of 7th April 2015 of Mr Mughal and the attachments thereto and have heard the concessions made by Mr McVeety on behalf of the Secretary of State. In such circumstances it is clear from the documentation that Mr Mughal is a German citizen; that he is exercising treaty rights and that he is self employed within the UK trading as Mughal Motors. Therefore the Appellant is entitled to a residence card.
11. He is operating a self-employed business. The level of success of that business is not a relevant feature and I accept that the Appellant is entitled to a permanent residence card as confirmation of her right of residence within the United Kingdom pursuant to the Immigration (EEA) Regulations 2006 and that it can be concluded to the

Tribunal's satisfaction that the Appellant's Sponsor is self-employed within the terms meant both under EU Law generally and paragraph 4 of the 2006 Regulations.

Notice of Decision

The Appellant's appeal is therefore allowed pursuant to the Immigration (EEA) Regulations 2006.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris