



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

Appeal Numbers: IA/15474/2014
IA/15480/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Sheldon
Court
On 23 December 2014**

**Decision Promulgated
On 20 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**MRS POOJA
MISS VISHALI**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ruperalia, instructed by Just Legal Group
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is the mother of the second appellants. They were born on 14 January 1979 and 30 September 1996 respectively. They are both citizens of India.
2. The appellants appeal to the Upper Tribunal against the determination of First-tier Tribunal Judge Munro that was promulgated on 6 July 2014. Judge

Munro dismissed their appeals against the EEA decisions of 24 March 2014. The first appellant was given notice that her residence card was revoked and the second appellant was given notice refusing to issue a residence card.

3. In making these decisions, the Secretary of State said was not satisfied that they could derive rights of residence from the husband of the first appellant, Mr Esze, a Hungarian national, who is the step father of the second appellant because she was not satisfied Mr Esze was a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006.
4. After considering the evidence and arguments presented to the First-tier Tribunal, Judge Munro concluded that the appellants had failed to establish that Mr Esze was a qualified person and he dismissed the appeals. The grounds of appeal to this Tribunal are that Judge Munro misdirected himself and/or made perverse or irrational findings on matters that were material to the outcome. The grounds also rely on article 8 of the human rights convention.
5. The appellants asserted that they had submitted sufficient evidence to show that Mr Esze was self employed in the UK as confirmed by documents from HM Revenue and Customs and his accountants. The appellants argued that the judge had failed to give sufficient weight to the historic documents showing Mr Esze's self employment up to the end of the 2012-2013 tax year and that the judge had erred by drawing adverse inferences from the failure to supply similar evidence for the 2014-2015 tax year when the appeal was determined during that tax year.
6. Mr Ruperalia began by submitting a fresh bundle of documents. It would appear that neither the appellants nor their representatives had kept a copy of the documents submitted to the First-tier Tribunal. It also transpired that copies had not been provided to the Secretary of State, the appeals to the First-tier Tribunal being determined without hearings at the appellants' request. Unusually, I was the only person who had access to the documents relied on by the appellants in their appeals to the First-tier Tribunal.
7. I have compared the fresh bundle with that previously submitted. The first 28 pages of the new bundle contain documents relating to the EEA decisions and the appeals. They were not included in the original bundle but are not disputed and have been available to both parties in other ways. The fresh bundle at pages 29 and 30 contain the tax calculation for 2013-2014 in relation to Mr Esze's income. That was not before Judge Munro. He had sight of the tax calculations for the three previous years. At pages 31 to 37 the new bundle contains the accounts for the tax year ended 5 April 2014. Again, these were not before Judge Munro. Nor was the self-assessment tax return for that tax year before him, although it is included in the new bundle from page 38 although the earlier bundle contained similar documents for earlier tax years. The new bundle also

contains business bank statements post-dating Judge Munro's decision. Although several statements from these bank accounts were submitted with the original bundle, there were gaps and several of those in the new bundle were not before Judge Munro.

8. Mr Ruperalia admitted that he had some difficulties because he did not know what had been submitted to the First-tier Tribunal. He confirmed that he did not seek to rely on any document that was not before Judge Munro when dealing with the question of whether Judge Munro erred on a point of law but that he would seek to rely on fresh evidence if such an error was found.
9. Mr Ruperalia relied on the grounds of appeal. He said that the crucial date in these appeals was November 2013 when the second appellant applied for a residence card. At that time the Secretary of State decided that the second appellant could not derive a right of residence from her step father because it was not accepted he was a qualified person. In light of that finding, the Secretary of State decided to revoke the residence card issued to the first appellant. Mr Ruperalia reminded me that, at paragraph 13 of his determination, Judge Munro had listed the evidence submitted to the First-tier Tribunal. The Secretary of State made her decision on the basis that the documents relied on were not up to date and, according to Mr Ruperalia, Judge Munro merely borrowed this reasoning even though in law there is nothing to indicate when documents might become out of date.
10. I did not need to hear from Mr Smart because I was satisfied that the arguments presented by Mr Ruperalia amount to mere disagreement with the judicial findings made. It is clear from the determination that although Judge Munro is aware of the reasons why the Secretary of State made the decisions (see paragraphs 4 and 5) he does not simply endorse those reasons. Judge Munro carefully assesses the evidence for himself (see paragraphs 13 to 19) and concludes that the evidence fails to show that it was more likely than not that Mr Esze was a qualified person. It is clear from paragraph 20 the Judge Munro reached this conclusion because of the failure of the appellants to provide cogent evidence, the burden of proof being upon them.
11. There is absolutely nothing wrong in law with the decision or statement of reasons. The appeals failed because the appellants did not supply adequate evidence. The fact they now seek to rely on evidence that was not before Judge Munro is an indication that they now recognise what they had to do. It is open for them to make fresh applications to the Secretary of State.
12. I turn to the remaining ground of appeal that relates to the appellants' private and family life rights. Although the grounds of appeal to the First-tier Tribunal made reference to such rights, no evidence was presented to show the nature or extent of the appellants' private or family life and no arguments were made to suggest that the EEA decisions were

disproportionate. I add that Mr Ruperalia did not seek to argue the article 8 point.

13. I acknowledge that Judge Munro failed to address this ground of appeal and the failure to deal with a ground of appeal is an error on a point of law. However, in these cases because of the lack of evidence and the fact that there is no evidence that the Secretary of State intended to interfere with the private or family lives of this family (there being no indication of any removal action), the failure could not have been material. I conclude that any legal error on this point would not be reason to set aside the decision.
14. For all these reasons, the appeals to the Upper Tribunal fail and the decisions of Judge Munro are maintained.

Decision

The appeals to the Upper Tribunal are dismissed because the determination of Judge Munro does not contain an error on a point of law and his decision is upheld.

Signed

Date **8 January 2015**

Deputy Judge of the Upper Tribunal