



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

Appeal Number: IA/18631/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 14th January 2015**

**Decision & Reasons
Promulgated
On 27th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR TAREK SADDIK
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ahmed

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

DECISION AND REASONS

1. The Appellant is a citizen of Lebanon born on 22nd February 1984. The Appellant's immigration history goes back to 2008 but on 13th October 2013 he applied for a residence card as the spouse of a German national. That application was refused by the Secretary of State in a Notice of Refusal dated 3rd April 2014. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Shanahan sitting at Stoke on 29th August 2014. In a determination promulgated on 24th September 2014 the

Appellant's application under the Immigration (European Economic Area) Regulations 2006 was dismissed.

2. On 30th September 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 11th November 2014 Judge of the First-tier Tribunal Saffer granted permission to appeal on the basis that it was arguable that the judge had erred in his application of *Saint Prix [2013] EUECJ C-507/12* and its possible lack of relevance to students exercising treaty rights. On 24th November 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response does not assist the Tribunal to any great extent merely stating that on the evidence before him it appears that the judge had come to sustainable findings and submitting that the grounds did not disclose a material error of law and were an attempt to re-litigate the matter.
3. It is on this basis that the appeal comes before me. The Appellant is represented by his instructed solicitor Mr Ahmed. Mr Ahmed is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety.

Submissions/Discussions

4. Mr McVeety considerably shortens this matter by narrowing the issue in question that I am required to decide as to whether or not the Appellant's wife is going to undertake a college course and providing that she proves that she is then the Appellant will be entitled to his residence card. He equally acknowledges that documentary evidence had been provided proving that the Appellant's Sponsor Mrs Rima Ali Issa is attending college.
5. Mr Ahmed takes me to paragraph 23 of the First-tier Tribunal Judge's determination and points out that on the day of hearing the Sponsor had been issued with an enrolment sheet and that it is not possible to force the college to reissue an enrolment sheet. He emphasised that the Sponsor has not taken time off the course and that she has private medical insurance. He asked me to allow the appeal.

The Law

6. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
7. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising

after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

8. In order to be exercising treaty rights it is not necessary to look into the future as to whether an enrolment would take place but only on the day in question does it need to be considered. As such the judge has materially erred in his assessment. He acknowledged that the Sponsor and the Appellant were in a genuine marriage and that the Sponsor was in the early stages of pregnancy. All the Appellant needs to do in order to satisfy the Regulations is to show that she was enrolled at the date of hearing. She has shown clearly that she was and the issue of private medical insurance is not challenged Mr Ahmed having advised that that issue was raised before the First-tier Tribunal to the satisfaction of the judge. In such circumstances the Appellant was exercising treaty rights and I set aside the decision of the First-tier Tribunal and remake the decision allowing the Appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and is set aside. The decision is remade allowing the Appellant's appeal under the Immigration (European Economic Area) Regulations 2006.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **27th January 2015**

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 **27th January 2015**

Deputy Upper Tribunal Judge D N Harris