IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/19395/2014
IA/19397/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29th May 2015	**On 15th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR MUHAMMAD RIAZ
(2) MRS SUGHRA BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr N Ahmed (Counsel)
For the Respondent: Ms A Brocklesby-Weller (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O. R. Williams, promulgated on 19th August 2014, following a hearing at Stoke-on-Trent, Bennett House, on 11th August 2014. In the determination, the judge dismissed the appeals of Mr Muhammad Riaz and his wife, Mrs Sughra Bibi. The Appellant subsequently applied for, and was

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are both citizens of Pakistan. Their dates of birth are 1st January 1943 and 1st January 1946 respectively. As mentioned, they are husband and wife. They appeal against the decision of the Respondent dated 16th April 2014 refusing their application for a residence card as confirmation of a right to reside in the UK as the family members of a British citizen. Both had entered the UK on 7th April 2013 on a visitor's visa, valid from 6th March 2013 to 6th September 2013, before applying for a residence card as the family members of their daughter-in-law, a British citizen.

The Refusal Letter

3. The refusal letter of 16th April 2014, observes that their son, Sury Ejaz Ahmed Riaz, had also been issued with a residence card on 10th November 2009, as the spouse of a British national under Regulation 9 of the Immigration (EEA) Regulations 2006. For this reason, the Respondents were satisfied that the Appellants met the criteria of Regulation 9(2)(a) regarding employment of the British national EEA state.

The Appellants' Claim

4. The Appellants' claim is that they began residing with their British citizen family member in Belgium (an EEA member state) on 19th July 2006. Their family member then returned to the UK on 14th October 2008. It was when they subsequently visited the British citizen family in the UK on 7th April 2013, on a visit visa, that they made their application to remain here. The British citizen family member had remained in Belgium for four years before returning to the United Kingdom in 2008.

5. The Appellants argued that they met the requirements of Regulation 9(2), because the British citizen in question was residing in an EEA state as a worker or self-employed person or was so residing before returning to the UK (see paragraph 9(2)(a)).

6. Additionally, the centre of the British citizen's life has transferred to the EEA state where that person resided as a worker or self-employed person (see Regulation 9(2)(c)). The British citizen here in question is Ms Saira Akhtar. In a short statement, dated 3rd September 2013, she states that,

> "I exercised treaty rights during my stay in Belgium. I married to Mr Ahmed Ejaz Riaz Sury and have four minor children. I sponsor my mother and father-in-law to apply for a residence card as my dependent relatives who are at present in the United Kingdom. My husband also supports their applications".

7. The Respondent rejected these claims on the basis that the Appellants had not provided any evidence to show that they both resided with their

daughter-in-law whilst they exercised treaty rights as a worker or a self-employed person in Belgium. Second, consideration was given to Appendix FM and paragraph 276ADE. However, consideration was not given to Article 8 because no valid application for Article 8 consideration had been made. As far as paragraph 276ADE was concerned the Appellants could not succeed under this provision because they had been in the UK for a very short period of time and have not lost ties with their country of origin.

The Judge's Findings

8. In what is a remarkably short determination, the judge held that the Appellants did not satisfy Regulation 9 "as they are the parents-in-law of the British citizen family member and hence do not satisfy the conditions in Regulation 9(2)(b)" (see paragraph 11 of the determination). However, the judge then did go on to give very clear and succinct reasons for this conclusion (at paragraph 12). Here, the judge pointed out that the Appellants normally live in Pakistan.

9. First, they had spent only a two week holiday with the British citizen family member in Belgium on 19th July 2006, following which they returned back home to Pakistan.

10. Second, they next visited the British citizen family member in the UK on 7th April 2013 on a visit visa.

11. Third, in the meantime, after their return in 2006 to Pakistan, the British citizen family member continued to remain in Belgium until 2008. The judge concluded that,

> "Looking at the wider aims of the Citizens Directive, there is no evidence that the British national's exercise of freedom of movement is or would be impeded by this decision or that the refusal will lead to the denial of any genuine enjoyment of the substance of the rights conferred on an EU citizen by virtue of his status as an EU citizen" (see paragraph 12).

Grounds of Application

12. In the grounds of application, it is said that the judge fell into error because the Appellants fall within the definition of a family member in Regulation 7(1)(c) which the judge did not consider. The requirement to "have lived in the household" is not a requisite for this type of a family member. The attached statements to the Grounds of Appeal are pleaded on the basis of family reunion application or a wish to settle.

13. On 6th February 2015, permission to appeal was granted by the Upper Tribunal on the basis that, although the skeleton argument, and the grounds refer to Regulation 9, Regulation 7(1)(c) ought to have been addressed by the judge. In granting permission, it was also said that,

> "Although the dismissal of the appeal under Regulation 9 may not be infected by legal error, the failure to deal with the submission in the

> alternative under Regulation 7(1)(c) is arguable as the Appellants are entitled to have all matters raised to be properly considered."

The grant of permission ends with the stern observation that,

> "The Tribunal on the next occasion may also have to consider whether this application and the actions of the parties represent a distortion of the purposes and objectives of the community provision which grant the right in question. If this is found to be so the appeal may fail in any event".

14. On 4th March 2015, a Rule 24 response was entered by the Respondent Secretary of State. Here it was said that the First-tier Judge may have erred in considering that Regulation 9 was restricted in scope to the spouses of British citizens. However, the Appellants' claim to be the family members under Regulation 7(1)(c) is not material as the requirement under the amended Regulation is that the British citizen had transferred the centre of her life during her earlier employment in Belgium and this requirement is not met.

Submissions

15. At the hearing before me on 29th May 2015, I had the benefit of a detailed skeleton argument by Mr Ahmed, as well as two authorities put before me by Ms A Brocklesby-Weller. Mr Ahmed, appearing on behalf of the Appellants, submitted that the Appellants are entitled to know why they lost. The determination of the judge was not only very brief but also confused and confusing in that it had wrongly said that Regulation 9 was restricted to spouses, which is not the case. The Rule 24 response had actually accepted that the judge may have erred in this respect. That was enough for this Tribunal to make a finding of an error of law.

16. Second, if it be said that Regulation 9 was not in any event complied with, this also was wrong because from the period 2004 until 2008 the British citizen, Ms Saira Akhtar, had actually relocated to Belgium and had lived there. Therefore, there were no outstanding issues, she had lived there for four years and had shifted her centre of gravity there. It was as simple as that.

17. In reply, Ms Brocklesby-Weller submitted that there was no error of law, and certainly no material error of law because the relocation to Belgium was not a "genuine residence in the host member state" as EU law required. She drew my attention to two important judgments. The first, rather well-known one, is **Surinder Singh (case C-370/90, dated 7th July 1992)**. The second one is a more recent judgment of **O & B v Minister Voor Immigratie, dated 12th March 2014**.

18. In reply, Mr Ahmed submitted that the Appellant was entitled to know what the issues were against them and none had been identified and they had complied with Regulation 9. He asked that the Tribunal make a finding of an error of law and remit the matter to the First-tier Tribunal.

Error of Law

19. It is plainly an error of law to suggest that "the Appellants do not satisfy Regulation 9 as they are the parents-in-law of the British citizen family member and hence do not satisfy the conditions in Regulation 9(2)(b)" as is suggested in paragraph 11 of the determination. The provision is not restricted to spouses only. However, the important question is whether this is a "material" error such that the determination should be set aside. For the reasons I give, I am firmly of the view that the determination should not be set aside.

20. On any view, the present claim is a ruse designed to circumvent and abuse both national and EU law and to acquire a benefit which otherwise is not due. It is remarkable the extent to which the Appellants have gone to achieve their ends in this case. If this is the finding of the judge, as it plainly is at paragraph 12, then the Appellants know full well why they have lost the appeal, and this Tribunal can only agree with that finding. Second, if this is the finding of the judge below, then it drives a coach and horses through any claim based on EU law made by the Appellants, because EU law is being used as a device by these Appellants to acquire a benefit to which they are not due.

21. Specifically, lest there be any doubt, this application fails for the following two reasons. First, it cannot succeed under Regulation 9 because the "centre of British citizen's life" has to be "transferred to the EEA state", and thereafter she is required to have "resided as a worker or self-employed person" in the state of Belgium, (see Regulation 9(2)(c)). The letter of 3rd September from DV Solicitors, making the application for a residence card on behalf of the Appellants is highly illuminating in this respect. It draws attention to the fact that Mrs Saira Akhtar has married Mr Ahmed Ejaz Riaz Sury and that the couple are enjoying a strong and stable marriage and have now got four minor children. There is no credible evidence of Mrs Saira Akhtar having worked or being employed as a self-employed person in Belgium. The requirement of "the centre of British citizen's life" having been transferred, does not end there. Regulation 9(2) and (3) sets out "factors relevant to whether the centre of British citizen's life has transferred to another EEA state", and this is not an exhaustive list, but includes "the degree of integration of P in the EEA state", as well as "the period of residence in the EEA state as a worker or self-employed person". There is no evidence that either of these requirements work in favour of Ms Saira Akhtar. Reliance upon Regulation 9 is therefore misconceived.

22. Second, as far as Regulation 7(1)(c) is concerned there is no evidence that this was actually argued by Counsel in front of Judge O. R. Williams. Even so, as the Rule 24 response makes it only too clear reliance on this provision too makes it necessary for the centre of life of Mrs Saira Akhtar to have been transferred to Belgium. The same considerations apply as above. Moreover, as the case of **O & B v Minister Voor Immigratie** makes clear, there has to be "genuine residence in the host member state of the union citizen" (see paragraph 56).

23. Finally, Judge O. R. Williams was entirely correct in stating that "there is no evidence … … that the refusal will lead to the denial of any genuine enjoyment of the substance of the rights conferred on an EU citizen … …" (paragraph 12). And the grant of permission, is equally correct in stating (at paragraph 6) that this Tribunal may have to consider whether "the actions of the parties represented distortion of the purposes and objectives of the (EU) provision".

24. This is because the case of **O & B** makes it clear that the crucial issue in this respect is for Mrs Saira Akhtar, "to remove the same type of obstacle on leaving the member state of origin … … by guaranteeing that that citizen would be able, in his member state of origin, to continue the family life which he created or strengthened in the host member state" (see paragraph 49).

25. In the instant case, Ms Saira Akhtar did not "create" or "strengthen" her family life in the host member state because after a short visit of two weeks in 2006 by the Appellants, following which they returned to Pakistan, Ms Saira Akhtar continued to remain in Belgium for another two years until 2008, after which she returned back to the UK.

26. The entire exercise, therefore, is nothing short of a ploy and a deliberate attempt to violate in a cynical fashion the essential provisions of EU law. Accordingly, although the judge appears to have erred in one respect in relation to Regulation 9, that error does not infect the determination as a whole, and this decision is not to be set aside.

Notice of Decision

27. The decision of the First-tier Tribunal is not to be set aside. This is because the Upper Tribunal may (but need not) set aside the decision of the First-tier Tribunal (see Section 12(2)(a)). No other outcome is possible but the dismissal of the appeal of the two Appellants as decided by the judge below.

28. This appeal is dismissed.

29. No anonymity order is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 12th June 2015