



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

Appeal Number: IA/39340/2014
IA/39334/2014

THE IMMIGRATION ACTS

**Heard at Stoke
on 3 September 2015**

**Decision & Reasons Promulgated
On 8 September 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**VIKTORIA VOROS
MUSFER BUTT**

(Anonymity direction not made)

Respondents

Representation:

For the Appellant: Mr A McVeety – Senior Home Office Presenting Officer

For the Respondent: Mr L Doyle Trainee Solicitor with M & K Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Metzger promulgated on the 8th May 2015 in which the Judge allowed the appeal under the Immigration (EEA) Regulations 2006.

Discussion

2. The appellants before the First-tier Tribunal are nationals of Hungary and Pakistan born on the 12 May 1995 and 12 August 1989 respectively.

3. On 18 October 2014 the respondent refused the second appellant's application for a Residence Card as confirmation of a right of residence under European Community law as the spouse of an EEA national exercising treaty rights in the United Kingdom on the basis the marriage is a 'sham marriage'.
4. The Judge, having considered the evidence found that the Secretary of State had failed to establish to the relevant standard that the marriage was one of convenience and allowed the appeal against the Regulation 2 refusal.
5. The basis of the challenge is that the refusal was on two grounds, the first relating to the 'sham marriage point' (Regulation 2) and the second that the appellants had failed to provide sufficient evidence to demonstrate that the EEA national (the first appellant) was exercising treaty rights in the United Kingdom (Regulation 6). The refusal was therefore by reference to both Regulations 2 and 6.
6. It is conceded before the Upper Tribunal that Judge Metzger has erred in law in not making a finding as to whether the first appellant was a qualified person under Regulation 6.
7. The issue was therefore one of the materiality of this error. Within the bundle was evidence of the EEA national's engagement with the labour market in the United Kingdom including at pages 185 to 216 evidence of employment. The second appellant in his witness statement refers to a job at the KFC being lost by the EEA national as a result of an inability to undertake the work, but material made available on the day of the hearing does establish that the first appellant has remained engaged in the labour market and in employment and has been exercising treaty rights in accordance with the Free Movement Directive. Accordingly Regulation 6 has been shown to have been satisfied.
8. I find no legal error material to the decision to allow the appeal has been made out. The determination shall stand.

Decision

9. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson
Dated the 7 September 2015