



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

Appeal Number: IA/42226/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 November 2015**

**Decision and Reasons
Promulgated
On 26 November 2015**

Before

**LORD TURNBULL
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ARSLAN SADIQ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P. Nash, Specialist Appeals Team
For the Respondent: Mr Z. Ranjha, Legal Representative

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of Mr Sadiq, who in turn appealed against the decision to refuse to grant him a residence card as confirmation of his right of residence under EU law as the spouse of an EU citizen exercising treaty rights in the United

Kingdom. We shall use the same terminology as that employed by the First-tier Tribunal Judge and refer to Mr Sadiq as the appellant. The First-tier tribunal did not make an anonymity order, and we do not consider that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The appellant is 27 years old and is a citizen of Pakistan. He has been in the United Kingdom since around 2012 and was granted leave to remain as a student until 26 March 2015, although this was curtailed on 8 July 2014. On 25 March 2014 he applied for a residence card as confirmation of a right to reside in the United Kingdom.

3. The appellant's application was based upon the premise that his wife, Amreen Khan, a French national, was exercising treaty rights in the United Kingdom. In support of his application he provided details of her employer, including a business telephone number, the number of hours worked per week, the salary received and her national insurance number. The name and address of the employer was given as:

“Privilege Security Services Limited 26 Coopers Lane,
Leyton, London, E10 5DG”

4. On 25 October 2014 the Secretary of State wrote to the appellant giving her reasons for refusing his application. That letter included an explanation that various unsuccessful checks had been undertaken to verify his wife's employment. It was noted that a telephone call made to the employer the day before could not be connected and that the company could not be located at Companies House or on websites searches. It was explained that in these circumstances the Secretary of State was not satisfied that the business was genuine. The letter included the following explanation:

“Whilst every attempt has been made by the UK Border Agency to establish your EEA family member's employment the burden of proof rests with the applicant to provide such evidence and you have failed to do so. It is therefore concluded that you have failed to provide sufficient evidence to demonstrate that your EEA family member is currently a qualified person in the United Kingdom as a worker, as detailed under Regulation 6 of the Immigration (EEA) Regulations 2006”

5. It was plain from the content of the Secretary of State's letter that an error had occurred in the verification process which had been undertaken. Instead of using the company name as supplied by the appellant in his application, the searches which the Secretary of State undertook were in the name of:

“Priveleg Security Systems”

It was therefore not altogether surprising that no record of the appellant's wife's claimed employer had been discovered.

6. At the hearing before the First-tier Tribunal the Secretary of State was not represented and on the basis of the information before her the judge concluded that the respondent had searched under the wrong name when making enquiries relating to Ms Khan's exercise of treaty rights. For that reason she concluded that the Notice of Decision refusing the issue of the Residence Card was erroneously based. She then decided that the appellant's appeal must succeed.
7. The First-tier Tribunal Judge however also drew attention to what she described as "curious facts" apparently showing the intertwining of Ms Khan's employers and the domestic lives of the appellant and Ms Khan. She noted that in the application form completed by the appellant in March 2014 the address given for both him and Ms Khan was "26 Coopers Lane, Leyton, London, E10" and observed that this same address was given in various documents for the company by which Ms Khan was said to be employed. She noted that by the time of the hearing before her the address for the appellant and Ms Khan was "31 Belvedere Road, Leyton, London, E10" and observed that this was the address given for the company in more recent documentation. The First-tier Tribunal Judge explained that the link between the apparent employers, Ms Khan and the appellant required further investigation. In the circumstances she held that she was not able to make any directions as to the issue of a Residence Card.
8. Before us Mr Nath submitted that the First-tier Tribunal Judge had apparently held that the Secretary of State's decision had not been in accordance with law but had then purported to allow the appeal outright, without making a finding that the appellant qualified for the issue of a Residence Card. Mr Ranjha on the other hand contended that there had been no error of law and that in light of the obvious mistake which had been made in the verification process the First-tier Tribunal Judge had made the only decision which was open to her.

Discussion and Conclusion

9. It appears to us that the First-tier Tribunal Judge has made an error of fact in paragraph 2 (e) of her decision in which she states: "On 25th March 2015 the day before the expiration of his leave the appellant applied for a Residence Card". It is plain from what is said in the Secretary of State's reasons for refusal letter, and from the date of that letter, that the application made by the appellant was dated 25 March 2014, a year before the original expiry of his leave to remain and before that leave was curtailed.

In the circumstances which we shall go on to explain this error as to chronology is of no importance.

10. In the circumstances which we have set out above we are satisfied that the First-tier Tribunal Judge has not given adequate reasons for her decision to allow the appeal outright and has made a material error of law in so doing. She was no doubt correct to decide, on the information provided to her, that the conclusion which the Secretary of State had arrived at was based upon a mistaken approach to verification. The appellant's application however was based upon the claim that his wife was exercising treaty rights in the United Kingdom. No findings were made on this crucial issue by the First-tier Tribunal Judge. Indeed, she expressly stated in paragraph 9.2 of her decision that she was not able to make any finding on this issue as a consequence of the reservations which she entertained over the apparent linkage between the company said to be Ms Khan's employers and the appellant and Ms Khan herself.
11. We will therefore allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal Judge promulgated on 4 June 2015. We will re-make the decision by finding that the Secretary of State's decision as explained in her reasons for refusal letter dated 25 October 2014 was not in accordance with law and we will order that the appellant's application should be remitted to the Secretary of State for a lawful decision to be made.

Notice of Decision

12. The appeal is allowed. Mr Sadiq's application for a residence card is remitted to the Secretary of State to permit a lawful decision to be made thereon.

Signed: Alan D. Turnbull
Judge of the Upper Tribunal

Date: 24/11/2015