



IAC-FH-CK-V1

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

Appeal Number: IA/46232/2014

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Decision & Reasons Promulgated  
Newport  
On 29<sup>th</sup> October 2015**

**On 19<sup>th</sup> November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MRS LIUDMILA MELNIKOVA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. The Appellant appeals with permission a decision of the First-tier Tribunal, Judge Barcello promulgated on 6<sup>th</sup> February 2015 in which the judge concluded that the Appellant had not met the burden upon her of establishing that her application for an EEA residence card had been wrongfully refused by the Respondent. The relevant Regulation is that set out at 9(1) of the EEA 2006 Regulations.

2. The grounds complain that the judge when making his decision failed to take into account a bundle of documents submitted by the Appellant and received by the Tribunal on 6<sup>th</sup> February 2015. The grounds assert that the directions issued by the court required that those documents be lodged by that date and in the use of that wording included 6<sup>th</sup> February to the point that it was grossly procedurally unfair for the judge to reach his decision on 6<sup>th</sup> February without having taken those documents into account. Those documents also amended the Grounds of Appeal before the judge to include a ground that the Appellant was entitled to a residence permit or entitled to remain in the United Kingdom and not to be removed on the basis of a derivative residence right under 15A of the 2006 Regulations.
3. The directions issued by the court are, Mr Richards concedes, ambivalent in the context that the direction to the Respondent is that documents must arrive before 6<sup>th</sup> February 2015 but the direction to the Appellant is differently worded to the point that they must be received by 6<sup>th</sup> February 2015 and he does not dispute that the Appellant was entitled to assume that those documents would be taken into account by the judge. Further Mr Richards indicated that the evidence that had been submitted and had been before the judge, or would have been before the judge and which he had had the opportunity of looking at, was such that he would not seek to make a decision defending the Respondent's refusal under the regulations.
4. Taking into account those submissions and the adversarial nature of these proceedings I find that the decision of the judge is vitiated by material legal error, namely failing to take into account documentary evidence which was provided to the court, albeit not before the judge, by the date of his decision, and I set it aside. I remake the decision in this Tribunal, allowing the Appellant's appeal on EEA Regulations grounds.
5. It follows that the Appellant is entitled as a family member to a residence card in the context of Regulation 17.

Signed

Date

Deputy Upper Tribunal Judge Davidge