



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/51118/2013

THE IMMIGRATION ACTS

Heard at Glasgow
On 19 December 2014

Determination Promulgated
On 31 March 2015

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE DEANS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUHAMMAD ABID NAZIR

Respondent

Representation:

For the Appellant: Ms R Pettersen, Home Office Presenting Officer
For the Respondent: Present, but not represented

DETERMINATION AND REASONS

- 1) This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal Scobbie allowing an appeal seemingly on the basis that the Secretary of State's decision was not in accordance with the law. The respondent before the Upper Tribunal, Mr Muhammad Abid Nazir (hereinafter referred to as "the claimant"), was the appellant before the First-tier Tribunal. He appeared before us unrepresented.
- 2) The claimant was on 19 October 1983 and is a national of Pakistan. His appeal to the First-tier Tribunal arose from a decision by the Secretary of State revoking the claimant's residence card. This residence card had been issued to him in February 2012 as the family member of a qualified person. In the view of the Secretary of State the

claimant had ceased to be a family member of that person so no longer had a right of residence in the UK or a right to hold a residence card. The Secretary of State considered that the claimant had no basis to stay in the UK under the Immigration (European Economic Area) Regulations 2006 ("EEA Regulations")

- 3) The reason why the Secretary of State considered that the claimant was no longer a family member of a qualified person was that his marriage to an EEA national had broken down.
- 4) At the hearing before the First-tier Tribunal the parties focused on the issue of whether the revocation decision by the Secretary of State was valid, in the sense that it complied with the appropriate formalities. The revocation decision was neither signed nor dated. It was accompanied by a letter giving reasons dated 20 January 2013. This letter was unsigned although it bore a typewritten name beside the place for a signature.
- 5) The Judge of the First-tier Tribunal took the view that the revocation decision was invalid because of the lack of a date or signature and therefore the claimant was entitled to retain his residence card. The judge further observed that the claimant had not ceased to be the spouse of an EEA national because he was still married to her. The judge stated that he would have allowed the appeal on this basis if the revocation decision had been in a valid form.
- 6) The application for permission to appeal lodged on behalf of the Secretary of State relied upon the Immigration (Notices) Regulations 2003, in which there was no requirement for signing or dating a notice. The judge had not shown any authority for the proposition that the notice was invalid.
- 7) The Secretary of State took issue further with the finding by the judge that the claimant was still married to his EEA national spouse. This was not supported by adequate reasoning. Alternatively, if the claimant was still a family member of an EEA national then this could be said to have waived any defect in the revocation decision. Finally, the Secretary of State submitted that if the decision under appeal was invalid it was not open to the judge to allow the appeal. If there was no valid immigration decision before the Tribunal then there was no jurisdiction.
- 8) Permission was granted on these grounds.
- 9) The appeal first came before the Upper Tribunal on 2 September 2014, when the President, the Hon. Mr Justice McCloskey, was sitting with Upper Tribunal Judge Deans. The Upper Tribunal pointed out that the Secretary of State's view that the marriage had broken down was based entirely on the evidence of a decree of judicial separation made by an Irish court on 22 October 2012. The Upper Tribunal directed that skeleton arguments should be prepared by each party on the two questions of law which were to be determined, as follows:

- a) Whether there had been compliance with Regulation 7 of the Immigration (Notices) Regulations 2003, including the issue of waiver.
 - b) Whether the effect of the decree of judicial separation was that, thenceforth, the respondent was no longer the spouse of the EEA national concerned within the ambit and meaning of the EEA Regulations 2006.
- 10) The appeal was relisted before the Upper Tribunal for hearing on 19 December 2014 before a panel comprising the Vice President, Mr C M G Ockelton and Upper Tribunal Judge Deans.
 - 11) At this hearing the claimant explained that he was no longer represented. On behalf of the Secretary of State, Ms Patterson explained that a skeleton argument had been provided to the claimant's former representatives on 16 December, who in response had confirmed that they had withdrawn from acting. Ms Patterson indicated that she had not seen the skeleton argument herself until the day before the hearing and she sought an adjournment to allow time for further preparation.
 - 12) It was put to Ms Patterson that the starting point for determination of the appeal was the position of the claimant's wife. The claimant confirmed that she was still his wife. Her name was Sadaf Saddiq and she was an Irish national. She was now living in the Republic of Ireland and had been doing so since October 2012. The proceedings she had brought there were for a judicial separation. The claimant said he went to Ireland in January 2013 to seek access to his son and there were proceedings in Ireland relating to this.
 - 13) It was put to the claimant that he was not entitled to continue to reside in the UK without his wife. He replied that he had been here for 7 years and had been working here. He could not suddenly move to Ireland. He was asked when he first told the Secretary of State that his wife was outwith the UK. The claimant replied that this was when he received documents after returning from Ireland to the UK on 21 November 2013. He had put this in his statement.
 - 14) The claimant's witness statement was referred to. This stated that his wife left on 2 October 2012 but in January 2013 she was still on maternity leave from her employment in the UK. The claimant confirmed that his wife had been in Ireland since October 2012.
 - 15) At this point we rose for consideration and returned to the hearing to give our decision.
 - 16) On the question of the adjournment sought on behalf of the Secretary of State, we noted that the skeleton argument for the Secretary of State had been supplied only the day before the hearing. The directions had required that the claimant's skeleton argument be provided within 28 days of 3 September 2014 and the Secretary of State's skeleton argument within a further period of 28 days. The claimant's skeleton argument was received by the Upper Tribunal on 11 November 2014. The Secretary of

State's skeleton argument should have followed within 28 days thereafter. No explanation had been provided as to why the Secretary of State's argument was supplied so late. There had been ample time since 3 September for the Secretary of State to consider the issues concerned. Accordingly an adjournment was refused.

- 17) On the question of the validity of the decision revoking the residence card, we accept the submission on behalf of the Secretary of State that in the Notices Regulations there is no requirement for this to be signed and dated. The claimant was served with the decision revoking the residence card on his return from the Republic of Ireland in November 2013. There was no requirement that the notice should be signed and dated. It was properly served upon the claimant in accordance with reg. 7 and was a valid decision. It was the supposed lack of validity of the notice on which the Judge of the First-tier Tribunal erroneously based his decision and accordingly this decision cannot stand and is set aside.
- 18) The second issue before us was whether the Irish decree of judicial separation amounted to a divorce. If it was a divorce then the claimant was no longer a family member under the EEA Regulations. Although we had no expert evidence before us on the meaning of the judicial separation under Irish law, we were satisfied that by definition a judicial separation was not a divorce. The claimant and his wife were still married.
- 19) According to the Secretary of State's decision the residence card was revoked because the claimant ceased to be the family member of an EEA national. As stated in the preceding paragraph, we are not satisfied that his marriage terminated. It does not necessarily follow, however, that the Secretary of State was wrong to revoke the residence card on the basis that the claimant was no longer the family member of a qualified person.
- 20) Under reg. 17(1) the Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person. In terms of reg. 20(2) of the EEA Regulations the Secretary of State may revoke a residence card if the holder has ceased to have a right to reside under the Regulations. A "qualified person" is defined in reg. 6 and extends to an EEA national who is in the United Kingdom in one of several different capacities, such as a worker, self-employed person or student. The significant point in relation to this appeal is that in order to be a qualified person the EEA national must be in the United Kingdom.
- 21) As the claimant made clear at the hearing before us, his wife has not lived in the UK since October 2012 and it appears she has not visited the UK since then. While the claimant was entitled to travel with and accompany his wife and child, he was not entitled under European law to a residence card as his wife's family member after his wife and child had left the United Kingdom. It is clear that there were grounds for revoking the residence card as the claimant's EEA national spouse was no longer a qualified person and so the claimant no longer had any right under European law to reside in the UK.

- 22) The claimant asserted that the UK was his home and that he had been here for 7 years. He never agreed to his wife travelling to Ireland. This was not a matter, however, that would affect the outcome of this appeal. If the claimant sought to regularise his position he would have to pursue this either with the Secretary of State or with the authorities of the Irish Republic.
- 23) The claimant pointed out to us that his wife was still in employment in the UK at the date of revocation of the residence card. We note that although his evidence was that she was employed, she was on maternity leave and she was no longer residing in the UK. The exercise of her contractual rights in relation to her maternity leave were not relevant to showing that she was in the UK when in fact she was residing in the Republic of Ireland.
- 24) Our conclusion is that the decision of the First-tier Tribunal is set aside on the grounds of an error of law. The First-tier Tribunal did not deal with all the grounds before it but made its decision on an incorrect basis. We substitute a decision stating that the claimant has no right to a residence card either at the date of the decision or at the date of the hearing.

Conclusions

- 25) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 26) We set aside the decision.
- 27) We re-make the decision in the appeal by dismissing it.

Anonymity

- 28) The First-tier Tribunal did not make an order for anonymity. We have not been asked to make such an order and see no reason of substance for so doing.

Fee Award

Note: this is not part of the determination

In the light of our decision to re-make the decision in the appeal by dismissing it, no fee award can be made

Signed

Date

Upper Tribunal Judge Deans