



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

Appeal Number: IA/25464/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On May 3, 2017**

**Decision & Reasons Promulgated  
On May 15, 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS KULWINDER KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr V Makol,(Legal Representative)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I do not make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is an Indian national. On February 7, 2011 she entered the United Kingdom as a student. On November 3, 2014 she applied for a residence card as confirmation of her right to reside in the United Kingdom

as the spouse of an EEA national, Mr Przemyslaw Bogus who was exercising treaty rights in the United Kingdom. The respondent refused this application on July 2, 2015 because she was not satisfied the marriage was genuine or that the EEA national was a qualified person under Regulation 6 of the Immigration (EEA) Regulations 2006.

3. The appellant lodged grounds of appeal against that decision and her appeal came before Judge of the First-tier Tribunal Bradshaw (hereinafter called the Judge) on February 26, 2016 and in a decision promulgated on March 15, 2016 the Judge allowed the appeal under the 2006 Regulations. The respondent appealed that decision on March 21, 2016 and permission to appeal was given on January 6, 2017 and the matter then came before me on March 9, 2017 when I took submissions on whether there had been an error in law.
4. Having heard submissions I concluded that the Judge had erred by placing too much weight on unsubstantiated claims of employment. The appellant had borne the burden of proving the EEA national's employment was genuine and by failing to produce any documentary evidence to support the claimed employment, at the date of hearing, there was an error in law.
5. Both Mr Avery and Mr Makol invited me to adjourn the matter for further evidence to be submitted and I acceded to that request.
6. On April 20, 2017 the appellant's solicitors submitted further evidence in line with my directions and that evidence included a contract of employment between JD Wetherspoon PLC and the EEA national dated March 13, 2017. The contract confirmed he was to be employed in the kitchen with a guaranteed minimum number of hours of 25 hours a week. Payslips confirming his employment were submitted along with bank statements corroborating the payments made by the employer.
7. The EEA national gave oral evidence at the hearing and was cross-examined by Mr Avery. He confirmed that he worked in a restaurant in Windsor and generally worked five days a week on approximately twelve hour shifts. At the conclusion of his evidence Mr Avery indicated that he was satisfied that the EEA national was working and therefore exercising treaty rights. The previous issue of whether the marriage was genuine had been addressed by the Judge at the First-tier hearing and this was no longer an issue for myself.
8. I indicated to Mr Makol that based on the oral evidence and the documentary evidence that had now been submitted I accepted the EEA national was exercising treaty rights and consequently this appeal must succeed.
9. I invited representations on whether a fee award should be made but indicated that I was allowing this appeal based on the new evidence. Mr Makol confirmed that no application for a fee award was being made.

10. I therefore indicated to the appellant who was present at the hearing that I would be allowing her appeal and this decision confirms my reasons for doing so.

**NOTICE OF DECISION**

11. The original decision of the First-tier Tribunal did involve the making of an error of law and I set that decision aside. I have remade the decision allowed the appeal.
12. No anonymity direction is made.

Signed

Date May 12, 2017

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award is made because the appeal was allowed on fresh evidence.

Signed

Date May 12, 2017

Deputy Upper Tribunal Judge Alis