



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/00459/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6<sup>th</sup> March 2018**

**Decision &  
Promulgated  
On 3<sup>rd</sup> April 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MR UMER AZHAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Lee, Counsel instructed by Britain Solicitors  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State of 5<sup>th</sup> January 2016 to refuse his application for a permanent residence card as confirmation of his right to reside in the United Kingdom under Regulation 15(1)(b) of the Immigration (EEA) Regulations 2006. First-tier Tribunal Judge Carlin dismissed the appeal in a decision promulgated on 19<sup>th</sup> May 2017. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Nightingale on 30<sup>th</sup> November 2017.

**Background**

2. The Appellant entered the UK on 26<sup>th</sup> March 2007. His wife is a national of Lithuania who was issued with a Worker Registration Card on 10<sup>th</sup> October 2007. The couple married on 30 November 2007 in Lithuania. The Appellant was granted a residence card on 5<sup>th</sup> July 2010, the Secretary of State accepted that his EEA Sponsor had completed the twelve months required under the Workers' Registration Scheme. The Appellant applied on 3<sup>rd</sup> July 2015 for a permanent residence card as the family member of an EEA national who has resided in the UK with the EEA national in accordance with the 2006 Regulations for a continuous period of five years. The Secretary of State accepted in the reasons for refusal letter that the EEA Sponsor was employed from 30<sup>th</sup> July 2010 until 1<sup>st</sup> January 2013. The Secretary of State noted that the EEA Sponsor claims to have become self-employed after this date but did not accept that the evidence provided with the application was sufficient to demonstrate that the EEA Sponsor had been economically active in the UK as a self-employed person.
3. In his decision First-tier Tribunal Judge Carlin identified at paragraph 20 that the issue to be determined was whether there was evidence of the EEA Sponsor's self-employment during the period from 2<sup>nd</sup> January 2013 to 29<sup>th</sup> July 2015. The judge considered a number of documents submitted by the Appellant and concluded that the evidence did not demonstrate that the Sponsor had been self-employed during that period and therefore that she had been a qualified person for a continuous period of five years.
4. It is contended in the Grounds of Appeal that the First-tier Tribunal Judge erred in misdirecting himself by failing to consider the evidence of self-employment in the round which would have led to the conclusion that the EEA Sponsor was a qualified person during the relevant period of time. The grounds highlight that the judge considered the documents separately without considering them all together. In granting permission First-tier Tribunal Judge Nightingale considered that the grounds were arguable because the judge appeared to consider the documents individually rather than in the round and that it was also arguable that the judge overlooked some of the documents including HMRC records relating to the period of self-employment.

### **Error of law**

5. At the outset of the hearing before me Mr Clarke conceded that he could no longer defend the appeal. This was because the EEA Sponsor has been granted permanent residence in the UK in a decision notified to her in a letter dated 25<sup>th</sup> July 2017. That letter noted that, based on the information provided with her application, the EEA Sponsor was deemed to have acquired permanent residence in the UK on 15<sup>th</sup> December 2015. Mr Lee submitted a copy of the letter from the Home Office along with a copy of the permanent residence card and other documents relating to the Sponsor's self-employed status.
6. I take into account Mr Clarke's concession. I have also considered this letter along with the evidence which was before the First-tier Tribunal. In

my view the First-tier Tribunal Judge erred in his approach to the evidence as to the EEA Sponsor's self-employment. The judge considered the documentation at paragraphs 20 to 31. I agree with the contention in the Grounds of Appeal that the judge appears to have considered the documentation separately without considering them altogether in the round. As properly identified the period in dispute was 2<sup>nd</sup> January 2013 to 29<sup>th</sup> July 2015.

7. The evidence before the judge included a letter dated 3<sup>rd</sup> July 2015 from the EEA Sponsor's accountants detailing her net profits for the years 2014/15 and 2015/16. However the judge did not find this satisfactory as it did not cover the whole of the period in question as it did not cover the period up to 29<sup>th</sup> July 2015. The judge also looked at the tax returns for the years 2013/14 and 2014/15. The profit and loss accounts were also considered. In relation to each of these pieces of evidence the judge noted that the evidence did not confirm "continuous self-employment". The judge also had a letter from Arrow Transport Limited dated 26<sup>th</sup> January 2016 stating that the EEA Sponsor was subcontracting on a self-employed basis. The judge also referred at paragraph 29 to evidence from EDG Transport saying that self-employment began on 4<sup>th</sup> March 2013 but the judge considered that there was no evidence to cover the period 2<sup>nd</sup> January 2013 to 3<sup>rd</sup> March 2013.
8. In my view it is clear that the judge considered these pieces of evidence separately without looking at the cumulative effect of all of these pieces of documentary evidence to see whether, when considered altogether, that evidence was capable of demonstrating that the EEA Sponsor was self-employed during the disputed period.
9. In my view the judge's failure to consider all of this evidence together in order to ascertain whether the relevant period was covered amounts to an error of law. As this error of law goes to the core of the Appellant's appeal I find that the decision of the First-tier Tribunal cannot stand and I set it aside.

### **Remaking the Decision**

10. I attach significant weight to the letter from the Home Office dated 25<sup>th</sup> July 2017 indicating that the EEA Sponsor acquired permanent residence on 15<sup>th</sup> December 2015. The Home Office clearly accepted the evidence in relation to the EEA Sponsor's self-employment up to that date.
11. I have also considered the evidence in the Appellant's First-tier Tribunal bundle. I note the National Insurance contributions document at page 2 of the bundle which confirms the payment of national insurance as a self-employed person from 28<sup>th</sup> April 2013 until 11<sup>th</sup> April 2015. I also take account of the documents at pages 4 and 5 of the Appellant's bundle which confirm the payment of income tax as a self-employed person for the tax year 2013/14 and 2014/15. I also take into account the letter from Arrow Transport dated 26<sup>th</sup> January 2016 confirming that the Sponsor was working at that time as a self-employed driver from 12<sup>th</sup> May 2014. I take

account of the profit and loss account for the year 2013/14 and 2014/15 at pages 60 to 63 of the Appellant's bundle. I have considered all of this evidence in the round and I am satisfied that this evidence establishes on the balance of probabilities that the Sponsor was employed as a self-employed person over the period between 2<sup>nd</sup> January 2013 until 29<sup>th</sup> July 2015.

12. The Secretary of State has not raised any issue as to the nature of the relationship between the Appellant and the Sponsor nor is any previous period of employment in dispute.
13. On the basis of all of the evidence before me I am satisfied that the Appellant has discharged the burden upon him to establish that he is the family member of an EEA national under Regulation 15(1)(b) of the 2006 Regulations as he has resided in the UK with the EEA national in accordance with the 2006 Regulations for a continuous period of five years.

### **Notice of Decision**

14. The decision of the First-tier Tribunal contained a material error of law. I set that decision aside. I remake that decision by allowing the Appellant's appeal under the 2006 Regulations.
15. No anonymity direction is made.

Signed

Date: 28<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes

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

I have allowed the appeal. I make a fee award of any fee that has been paid because the Appellant provided sufficient evidence to the Secretary of State to demonstrate that the Sponsor was exercising treaty rights as an EEA national during the relevant period.

Signed

Date: 28<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes