



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00775/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

FRED OPOKU MANU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant in person
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the Secretary of State refusing him a residence card as confirmation of a right to live in the United Kingdom.
2. The appellant's case is that he has lived in the Republic of Ireland with his wife, that he has satisfied the requirements for admission into the Republic of Ireland and is now entitled to reside in the United Kingdom. The Secretary of State was not satisfied that the residence in the Republic of Ireland was genuine and refused the application. The First-tier Tribunal came to the same conclusion and dismissed the appeal.
3. The appellant has made written submissions. He apologised to me for not being able to express himself clearly, pointing out that he is not using his first language. I find it right to acknowledge that he has shown considerable diligence and industry in presenting the case as effectively and well as he has. These are areas of law that many experienced practitioners would find difficult, they are not matters about which lay people can expect to be comfortable and I am satisfied that he has presented the case both on the papers and before

me with commendable clarity and brevity and I record my appreciation of that. However, he has not been persuasive.

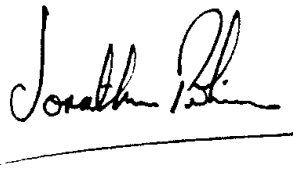
4. Permission to appeal was awarded by a Deputy Judge of the Upper Tribunal. There were three grounds but the ground that concerned her was whether the First-tier Tribunal had applied the right Regulations.
5. The decision is under the 2006 Regulations as amended. The appellant's primary case is the judge should not have been looking at the amended form. When the Deputy Judge gave permission she, understandably, did not have the benefit of the Rule 24 notice from the Secretary of State that is before me. I am quite satisfied that the correct Regulations were applied. To make it clear, it is the 2006 Regulations, as amended, and including a new form of Regulation 9. I am satisfied that the operative part of the transitional provisions means that they apply as to a case such as this where the application was made but not determined before 25th November 2016.
6. I particularly rely on Immigration (EEA) Regulations 2016, Schedule 5 (Transitory Arrangements) which states at the end of clause 2: that certain applications "made but not determined before 25th November 2016 is to be treated as having been made under the 2006 Regulations, as amended by paragraph 1 of this Schedule."
7. Regulation 9 in the amended form sets out conditions to be met by family members of British citizens and particularly at Regulation 9(3) it identifies factors relevant to whether residence in the EEA state was genuine.
8. In his submissions to me Mr Manu has argued clearly that it is wrong to look at motives and relies for this proposition on a decision of the European Court of Justice reported as **Akrich v SSHD [2004] Case C-109/01**. The difficulty with relying on this case is that it is a case made before the new Regulations are in force. If it is the case that the new Regulations are not compliant with the Directive then it is not something that can be litigated in this Tribunal and it has never been the appellant's pleaded case. I am therefore satisfied that the First-tier Tribunal did apply the right Rules.
9. The grant of permission was not encouraging on the subsequent grounds but I have asked myself if the judge has given legally adequate reasons for reaching the conclusion she did, that the residence was not genuine. I must answer that question in the affirmative. The judge had evidence from the appellant's wife but that was in the form of a witness statement. She was not called to give evidence so the evidence was not subject to cross-examination. The judge gave it little weight because it was, as she described it, untested evidence. There is nothing wrong in law in taking that approach.
10. The judge found the evidence of the appellant unsatisfactory and gave proper reasons for that. It particularly included episodes of vagueness when the witness had otherwise been confident and was particularly concerned about the short period of residence in which the British citizen was living in the Irish Republic. It was for only eleven months. The judge did have some regard to the appellant's apparent determination to live in the United Kingdom. This is a point that has to be looked at with some care. If the appellant did not wish to be in the United Kingdom he would not have been making an application for a residence card, I cannot read anything in the Decision and Reasons which suggests to me that the judge gave undue or improper weight to the fact that the appellant had previously tried to be in the United Kingdom. It was simply a recognition that it is something he had done before. I cannot read into that any indication that the judge was prejudiced or that her

mind was closed to the possibility that this was a genuine application. The determination just does not bear that meaning.

11. The reasons for finding that the residence was not genuine are not given in great detail and closer attention to the requirements of the Rules might have assisted everybody but it is quite impossible to say that they are not sufficient and lawful and it follows therefore, having been satisfied that the correct Rules were applied, I go on to be satisfied that there is no error of law and I dismiss the appeal against the decision of the First-tier Tribunal.

Notice of Decision

12. This appeal is dismissed.

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 17 May 2018