



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/00971/2017
EA/00973/2017
EA/00975/2017
EA/00976/2017

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 25th May 2018

Decision and Reasons Promulgated
On: 3rd July 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Irfan [K]

[A K]

[N K]

Farwa [K]

(no anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondents

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondents: -

DETERMINATION AND REASONS

1. The Respondents are nationals of Italy. They are siblings born, respectively, in 2000, 2003, 2006 and 1996. On the 3rd April 2017 First-tier Tribunal (Judge SJ

Clarke) allowed their linked appeals against decisions to refuse to issue them with confirmation of their right to reside in the UK as the family members of an EEA national exercising treaty rights. The Secretary of State now has permission to appeal against that decision.

2. The decisions under appeal before the First-tier Tribunal are dated the 18th January 2017. The Respondents had applied to remain in the UK with the man whom they claim to be their father, Mr Mohammed [K]. Mr [K] is residing in Nelson, Lancashire. Each application was refused on the ground that the applicant had failed to provide evidence that Mr Mohammed [K] was a qualified person as defined in Regulation 6 of the Immigration (European Economic Area) Regulations 2006.
3. When the matter came before the First-tier Tribunal it was on the papers only. Judge Clarke noted that there was some limited evidence relating to Mr [K]'s economic activity in the UK, namely that there are deposits in his bank account of £1000 per month, and that this did correlate to his claim to work in a café and earn that much. There was however nothing on the face of the credits to reflect the source and there was no other corroborative evidence of employment, such as payslips or a letter from the café owner. The determination goes on:

“Despite these observations I note that in the Appellant’s bundle there is a letter dated 15th December 2015 from the Home Office issuing the Sponsor with a Registration Certificate. It encloses 5 passports as well as other documents, and it is clear that the writer of the letter was aware of the applications by the dependents.

Accordingly, if the Sponsor was issued a Registration Certificate it is unclear as to why his dependents were not issued with similar certificates and the basis of the refusal given is that the Respondent was not satisfied the EEA national was not exercising treaty rights. This flatly contradicts the issuance of the registration card to the Sponsor, and accordingly I allow the appeal because the Respondent must have accepted the evidence for the Sponsor. In the immigration history it reads that the Appellants submitted their applications on 14 December 2016 but I do not accept this because the forms have the stamp of 28th August 2013 upon it which I conclude is the date the Respondent received their applications”

The appeals were thereby allowed.

4. The complaint at the heart of the Secretary of State’s appeal, which is made out, is that the Tribunal misunderstood the facts. These applications had not been made on the 28th August 2013 at the same time as the sponsor had made his

successful application for a residence card. The forms bearing the stamps from 2013 related to an earlier set of applications, the refusal of which had never been appealed. The decisions challenged in this instance related to an entirely different set of applications, made at a later date. The Secretary of State had been entitled, upon receipt of those applications, to enquire as to whether Mr [K] continued to exercise treaty rights. Accordingly the Tribunal's reasoning is flawed for material error of fact.

5. Before me Mr Diwncyz had to concede, however, that the Secretary of State's appeal was entirely academic since the Home Office records show that the four children were all granted residence permits back in March of this year. He therefore invited me to set the decision of the First-tier Tribunal aside for error of law, and substitute the decisions as follows:

"the case for the Appellants is unopposed and the appeals are therefore allowed".

Decisions

6. The decision of the First-tier Tribunal contains a material error of law and it is set aside.
7. The appeals are allowed with reference to the Immigration (European Economic Area) Regulations 2006.

Upper Tribunal Judge Bruce
2nd July 2018