



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05684/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 20 September 2018

Decision & Reasons Promulgated
On 21 September 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MIRZA RAHEEL AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Hussain, Counsel
For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan. He married his spouse ('the sponsor'), a British citizen in October 2012.
2. On 3 November 2016, the appellant applied for a residence card on the basis that he was a family member of an EEA citizen and that regulation 9 of the Immigration (EEA) Regulations 2016 (SI 2016/1052) ('the 2016 EEA Regs') applied. The basis of that claim was that the appellant and sponsor genuinely resided in Ireland before returning to the UK in accordance with the requirements of regulation 9.
3. On 5 June 2017, the respondent refused the appellant's application on the basis that he was not satisfied that the parties' residence in Ireland was genuine.

The appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal ('FTT'). Judge O'Hanlon dismissed the appellant's appeal in a decision dated 9 April 2018.
5. The FTT considered detailed documentary and oral evidence from both the appellant and the sponsor and made the following factual findings, inter alia: (i) the sponsor was working in Ireland between June and December 2015, as claimed, and; (ii) the couple resided together in Ireland but the duration of this was open to doubt. The FTT then considered whether the period of residence was genuine for the purposes of regulation 9(3) of the 2016 EEA Regs. The FTT acknowledged that in certain respects the couple's life transferred to Ireland but found there was insufficient evidence to support any meaningful integration into Ireland or any intention to settle there beyond a temporary period. The FTT also took into account the doubts regarding their length of residence in Ireland and the stated reasons for moving to Ireland. Having considered all the evidence, the FTT concluded that the couple's residence in Ireland was not genuine and was to circumvent the immigration laws that would otherwise apply to the appellant.

The appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the judge erred in law in finding an absence of evidence to support any meaningful attempt to integrate into Ireland such as to demonstrate an intention of permanent residence there.
7. On 21 May 2018, the FTT (Judge CA Parker) granted the appellant permission to appeal observing that there whilst the judge appears to have made careful findings, it was arguable that the judge did not have regard to the relevant principles set out in R v IAT and Surinder Singh (C-370/90) [1992] ECR I-04265 and therefore arguably failed to follow the relevant authorities giving guidance on the correct assessment of regulation 9.
8. At the hearing before me Mr Hussain relied upon grounds of appeal that he had drafted for the purposes of the permission application. As drafted these only clearly outline one ground of appeal relating to the FTT's approach to the degree of integration the parties had in Ireland. This overarching ground can be divided as follows:
 - (i) The FTT failed to take into account evidence that the appellant and sponsor had moved to Ireland with the intention of permanently residing there;
 - (ii) The FTT failed to make any reference to the Surinder Singh principles;
 - (iii) The FTT focused unfairly on the parties' length of residence and failed to make any clear finding about this; even if the FTT was only minded to find residence in Ireland was for a period of some six months ending in January 2016, it erred in finding this period inadequate to demonstrate genuine residence.

9. Mr Diwnycz submitted that the FTT decision was adequately reasoned and contains no error of law.
10. After hearing from both representatives, I reserved my decision which I now provide with reasons.

Discussion

11. It is convenient to address each of the broad submissions made on behalf of the appellant discretely and in the order set out in the grounds of appeal.

The FTT failed to take into account evidence that the appellant and sponsor had moved to Ireland with the intention of permanently residing there

12. The grounds of appeal draw specific attention to factors supportive of the claim that the appellant and sponsor transferred their lives and integrated into Ireland. The FTT properly considered these two matters to be set out at regulation 9(2)(c) and (d) and to be interlinked at [39]. Mr Hussain drew my attention to matters tending to show that the sponsor had transferred her life to Ireland and the couple had integrated into Ireland as follows: the parties were lawfully resident in Ireland; they had bank accounts, rented property and were registered with a GP; the sponsor had genuine employment in Ireland; they established family life in Ireland and were entitled to do so in exercise of the sponsor's Treaty rights. The grounds of appeal fail to properly acknowledge that the FTT was well aware of all these matters, having carefully summarised the evidence before it. In particular, the FTT expressly accepted that the sponsor was working as claimed in Ireland for the period June to December 2015 and was exercising Treaty rights [36]. The FTT also took into account the voluminous documentation in support of the parties living together in Ireland and enjoying family life there at least until January 2016 [38]. The documentary evidence available included bank statements, tenancy agreement and GP letters as referred to at [35] to [39]. The FTT was also clearly aware of the fact that the appellant obtained a residence permit in Ireland [14(h)]. When the decision is read as a whole, the FTT took all relevant evidence into account before reaching its ultimate conclusion that the residence of the appellant and the sponsor in Ireland could not be said to be genuine for the purposes of regulation 9(2)(c).
13. When the FTT observed that there was a lack of significant evidence of integration in Ireland at [39], the FTT at the same time expressly acknowledged that there was documentary evidence in support of residence. The FTT was entitled to find that notwithstanding the parties' residence in Ireland as supported by employment, bank statements, a tenancy agreement and GP letters there was an absence of evidence demonstrating meaningful integration such as how they "*pass their time in Ireland, whether they developed any friendships, whether they became involved in the local community in any manner whatsoever...*". The FTT was entitled to find that the lack of evidence of integration of this nature, whether written or oral, cast doubt on the genuineness of the residence. Mr Hussain invited me to find that there is no lawful requirement that there be integration of this kind and that the transfer of important aspects of the parties' lives is sufficient. He did not support this submission by reference to any

authority. It is clear from regulation 9(3) that the genuineness of residence requires a global assessment of all relevant matters and in particular the matters listed at (a) to (e) of regulation 9(3). Indicators that life has transferred to Ireland for a period of time is not in itself necessarily adequate. Much depends on the individual circumstances of the case. Given the FTT's concerns regarding the credibility of the appellant and sponsor, it was entitled to draw adverse inferences from the absence of the type of integration outlined.

The FTT failed to make any reference to the Surinder Singh principles.

14. Regulation 9 of the 2016 EEA Regs finds its genesis not from the relevant Directive but in Surinder Singh, a case which involved the return to the UK with her third country spouse of a British national who had exercised her right of free movement by working and living in Germany, with her husband, for a period of almost three years. In other words, in order to make the right of free movement effective, such ancillary rights are required to be implied on return to the national's country of origin, whereby the national retained the right to be accompanied by his or her spouse. The relevant principles established by Surinder Singh have therefore been transposed into regulation 9. The FTT carefully assessed the relevant factual matrix by reference to the important strands of regulation 9, having set it out in full at [6]. The absence of any express reference to Surinder Singh or O and B v Minister von Immigratie [2014] 3 WLR 799 is therefore not a material error of law provided that regulation 9 was properly applied. Mr Hussain did not submit that regulation 9 was unlawful or that in applying it in the manner it did, the FTT erred in its construction of it.

The FTT focused unfairly on the parties' length of residence and failed to make any clear finding about this; even if the FTT was only minded to find residence in Ireland was for a period of some six months ending in January 2016, it erred in finding this period inadequate to demonstrate genuine residence.

15. The FTT clearly had significant concerns regarding the inconsistent evidence regarding the length of the parties' residence in Ireland. The FTT considered the explanations provided and was entitled to doubt the veracity of these.
16. In O and B the Court noted that it would be an obstacle to free movement were equivalent rights not available on return to the citizen's home state: however, a refusal to grant such rights would only create such an obstacle if [51]:

"the residence of the Union citizen in the host member state has been sufficiently genuine so as to enable that citizen to create or strengthen family life in that member state."

17. In AA (Nigeria) v SSHD [2017] CSIH 38 the Court of Session rejected the submission that as long as the residence in question lasted for at least three months, the terms of the article had been met and were sufficient for the purposes of Regulation 9. In so far as the grounds submit that the period of residence of at least three months, without more, is sufficient, they are misconceived. In AA (Nigeria) the Court of Session emphasised that it is central to the decision in O and B that for 'residence in' the host

state, it is a 'genuine residence' which requires to be established, not a residence of any specific duration, albeit duration may be a relevant factor, but it is only one factor. The Court therefore emphasised the concern was with a residence which was 'sufficiently genuine' as to enable a person to create or strengthen family life there, which indicated a qualitative element. This required of the decision maker to make a judgement of fact and degree as to whether the individual has lived in the EEA State in question with sufficient permanence, continuity, or at least some expectation of continuity, to warrant the conclusion that he or she 'resided' there within the ordinary meaning of the word.

18. The FTT was required to carry out a qualitative assessment of the evidence bearing on the residence in Ireland of the appellant and his wife in order to determine whether it constituted genuine residence for the purposes of regulation 9. In carrying out that exercise it was entitled to consider the wide spectrum of evidence available, some of which supported the claim that the residence was genuine and some of which did not. Reading its decision as a whole, the FTT considered all the relevant matters before it as guided by regulation 9(3), and made a factual finding that the couple had no intention of genuinely trying to settle in Ireland, notwithstanding the sponsor's employment there and their residence there together – see in particular [42]. In effect, the argument that the appellant and the sponsor genuinely intended to settle in Ireland but were driven to change their plans by circumstances was rejected on the facts. This was a decision which the FTT was entitled to reach. The grounds of appeal do no more than disagree with the factual assessment reached and do not establish any error of law in the reasoning of the FTT.

Decision

19. The decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of a material error of law. That decision stands.
20. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed
M. Plimmer

Dated
20 September 2018

Melanie Plimmer
Judge of the Upper Tribunal