



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/07440/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 June 2018

Decision & Reasons Promulgated  
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR MAHMOUD MOHAMED SAADELDIN ISMAIL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Z Raza of Counsel, instructed by Maher & Co  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Egypt born on 22 November 1985.
2. On 10 February 2017 he applied for a permanent residence card as the family member of an EEA national exercising treaty rights in the UK *viz* Miss Klaudia Lakatos, a national of Hungary. This application was refused by the Respondent on 12 August 2017 on the basis that no evidence of the EEA national's national identity card or

passport had been submitted, Ms Lakatos' identity card having been reported lost or stolen on 8 June 2015. It was further asserted that the Appellant had failed to show that his EEA national Sponsor was exercising treaty rights for a continuous five year period.

3. The Appellant appealed and his appeal came before Judge Whitcombe of the First-tier Tribunal for consideration on the papers with a direction that the decision should not be made before 4 o'clock on 22 November 2017, which was the deadline for any additional written evidence upon which the Appellant wished to rely.
4. In a decision and reasons promulgated on 30 November 2017 the judge held at [2]:

*"No further communications have been received by the Appellant by the time I made the decision on 30 November 2017."*
5. The judge went on to dismiss the appeal on the basis that there was no direct challenge to the Respondent's assertion that the identity card relied on was invalid, nor had alternative valid documentation been provided and thus the mandatory requirements of Regulation 21(5) of the EEA Regulations had not been satisfied.
6. The judge was further not satisfied on the balance of probabilities that the Sponsor had been exercising treaty rights during the entire period, albeit there was evidence of modest earnings from self-employment during three tax years, there was unsatisfactory evidence of earnings between 13 April 2012 and December 2014.
7. Permission to appeal was sought in time on the basis that the judge had materially erred in that the Appellant's representatives on 21 November 2017 had sent a bundle of evidence to the Tribunal including the Appellant's wife's original Hungarian identity card and that this had been sent by recorded delivery. There were also submissions in respect of the exercise of treaty rights by the Appellant's wife, which were included in the bundle.
8. Permission to appeal was granted by First-tier Tribunal Judge Lambert in a decision dated 23 April 2018, on the basis that there was an arguable error of law in light of the fact that there was a bundle on the file marked received as a fax copy on 21 November 2017 and the judge does appear to have failed to deal with any of these documents.
9. A Rule 24 response was served by the Respondent on 28 June 2018 albeit it had been received in Field House on 21 June 2018, opposing the appeal on the basis that the Respondent was not prepared at that stage to accept the documents at face value, given that the Sponsor's Hungarian ID card had been cancelled.

#### *Hearing*

10. At the hearing before me, in light of the fact that there was clearly a bundle on the Tribunal file dated 21 November 2017, which expressly stated it included the original identity card, Mr Bramble was prepared to accept that there had been procedural unfairness in that this evidence had been served on the Tribunal in time but had not

been considered by the First-tier Tribunal Judge. However he pointed out that aside from the issue of identity, the judge and the Respondent were not satisfied as to the exercise of treaty rights during the five year period under consideration.

11. Mr Raza was content for there to be a further hearing in light of Mr Bramble's helpful concession as to the procedural fairness point.

*Findings*

12. In light of Mr Bramble's helpful concession, I find a material error of law in the decision of the First-tier Tribunal *viz* the failure to take account of material evidence served on the Tribunal in time, due to administrative error. This resulted in clear procedural unfairness to the Appellant and a *de novo* hearing is required.

**Notice of Decision**

I find a material error in the decision of First-tier Tribunal Judge Whitcombe. The appeal is remitted for an oral hearing *de novo* before the First-tier Tribunal.

The Appellant's representatives should submit any evidence upon which they wish to rely at the first opportunity to the First-tier Tribunal.

No anonymity direction is made.

Signed *Rebecca Chapman*

Date 5 July 2018

Deputy Upper Tribunal Judge Chapman