



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/13457/2016  
EA/13458/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 7 August 2018

Decision & Reasons Promulgated  
On 7 September 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARASH MOSTAME  
HONORATA MARTYNA MAJOWSKA  
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondents: Mr W Wilcox, Counsel, instructed by Augustine Clement Solicitors

DECISION AND REASONS

1. This is an appeal against the decision issued on 16 March 2018 of First-tier Tribunal Judge Sweet, which allowed the appellant's appeal against refusal of a residence card reflecting his status as the spouse of an EEA national.
2. The first appellant is a citizen of Iran, born in 1983. The second appellant is a citizen of Poland, born on 30 January 1976. It is common ground that they have been in a genuine marriage since 2008.

3. The appellant was granted an EEA family permit on 28 August 2010, valid until 15 February 2011 to join his wife in the UK. On 13 May 2011 the couple were issued with residence cards valid until 13 May 2016, reflecting their right to be in the UK under EEA law. On 9 May 2016 they applied for permanent residence cards. The applications were refused on 2 November 2016, leading to the appeal before First-tier Tribunal Judge Sweet.
4. The respondent refused the applications because it was not found that sufficient evidence of the EEA national's economic activity during a five year period had been shown. This was the issue that fell to be decided before First-tier Tribunal Judge Sweet. At paragraph 3 he sets out that the appellant had provided evidence going towards this point in a bundle consisting of 269 pages. At paragraph 7 the judge records that the appellant and his Polish wife gave evidence that was consistent with their witness statements and that another four witnesses who had provided witness statements were present at the hearing to support their statements. None of the evidence was subject to cross-examination by the respondent's Presenting Officer.
5. Paragraphs 8 and 9 of the decision set out a consensus that evidence of some significance had been provided for the appeal that had not been before the respondent but also agreement that it still did not show five years' continuous residence as a qualified person. In paragraph 9, counsel for the appellant made the following submission:

"In Counsel's view the appellants should be granted a renewal of their existing residence rights, albeit not permanent residence, as the second appellant could not satisfy five years' continuous exercising of treaty rights."
6. The First-tier Tribunal Judge then went on to make findings of fact as regards the appellants' immigration history, the genuine nature of the relationship and on the issue of the EEA national being a qualified person as follows in paragraphs 13 and 14:
  13. In support of their applications, evidence had been provided in respect of the second appellant exercising treaty rights. It was concluded by the respondent – and accepted by Counsel for the appellants at the hearing – that she could not satisfy the five year continuous period of her exercising treaty rights in view of gaps in her employment. Counsel submitted that there was however sufficient evidence for their residence cards to be renewed, albeit not on a permanent basis.
  14. In the light of the further documentation now provided by the appellants, I have concluded that they should be granted a renewal of their residence cards, albeit not on a permanent basis. This will enable them to attempt to apply at a later date for a permanent residence card based upon the EEA national exercising treaty rights for a continuous period of five years."
7. The respondent's grounds of appeal maintained that there was a failure to give reasons or adequate reasons for finding that the EEA national had provided sufficient evidence of being a qualified person such that she and Mr Mostame were entitled to a further 5 year residence card. The grounds state:

“It is submitted that these findings are completely inadequate. There is no detail as to what documents were seen, what time period they spanned, or indeed anything of substance which might help the reader to clearly understand the basis on which the appeal was allowed.”

8. I did not find that these grounds showed a material error in the decision of the First-tier Tribunal. As set out in paragraph 8 of the decision, it was accepted for the respondent that further information had been provided than had been before the original decision maker. As above, there was no cross-examination of the appellant or his partner or questioning of any other aspect of the evidence. The material that was before the First-tier Tribunal was extensive, running to some 269 pages. There is limited discussion of that evidence in the decision but it is not suggested in the respondent’s written grounds or before me that there were material shortcomings in the documentation that could have led to any other outcome had the decision contained a more detailed examination of it.
9. Mr Wilcox referred to the Upper Tribunal case of **MK (duty to give reasons) Pakistan [2013] UKUT 00641**. In particular, he drew the Tribunal’s attention to the discussion in that case of the duty to provide a reasoned judgment. He relied on the quotation from **R v. Immigration Appeal Tribunal, Ex parte Khan [1983] QB 790** in paragraph 7, which states as follows:

“The important matter which must be borne in mind by Tribunals in the present type of circumstances is that it must be apparent from what they state by way of reasons first of all that they have considered the point which is at issue between the parties and they should indicate the evidence on which they have come to their conclusions. Where one gets a decision of a Tribunal which either fails to set out the issue which the Tribunal is determining either directly or by inference, or fails either directly or by inference to set out the basis on which it has reached its determination on that issue, then that is a matter which will be very closely regarded by this court and in normal circumstances would result in the decision of the Tribunal being quashed. The reason is this. A party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the Tribunal; in other cases it may not. Second, the Appellant is entitled to know the basis of fact on which the conclusion has been reached. Once again in many cases it may be quite obvious without the necessity of expressly stating it, in others it may not.”


10. Mr Wilcox also placed weight on the comments of Lord Justice Henry in the case of **Flannery v Halifax Estate Agencies [2000] 1 All ER 373**, set out in paragraph 8 of **MK** as follows:

“(3) The extent of the duty, or rather the reach of what is required to fulfil it, depends on the subject matter. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about the events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say.”

11. In the decision of the First-Tier Tribunal here, the correct dispute was clearly identified; see paragraph 5 and 6 of the decision. The extent and weight of the appellants' additional materials before the Tribunal is not challenged by the respondent, only the extent of the analysis set out by the First-Tier Tribunal. In my judgment, this a case where there was a straightforward factual dispute to be settled and material before the judge which afforded only one answer. This was one of those relatively unusual cases where what the judge said here was sufficient, it being clear that he found that the materials in the 269 page bundle showed that the spouse was a qualified person for the purposes of the five year further residence permit.
12. I therefore did not find that the grounds here showed a material error on a point of law.
13. At the hearing, the respondent sought to argue a further ground which was not contained within the written grounds and was therefore a matter on which permission had not been granted. It was suggested that it was not open to the First-Tier Tribunal to allow the appeal in order for a further 5 year residence permit to be issued where the applications had been for permanent residence cards. Firstly, as above, I did not accept that this ground was arguable where permission on it had not been granted, there was no application to amend the grounds and the point was raised late, not even at the outset of the hearing as a preliminary issue. Further, in line with my decision above, the First-Tier Tribunal was correct to find that the materials showed that the couple qualified for a further 5 year residence permit. Whether or not they had a residence card showing it to be so, they were lawfully resident in the UK, and an appeal against the decision stating otherwise fell to be allowed.
14. For these reasons, I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

### **Decision**

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 21 August 2018