



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00702/2016
IA/01667/2016

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 28th March 2018

Decision and Reasons Promulgated
On 06th April 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK

Between

MR MUHAMMAD USMAN IQBAL
MRS SADAF ZULFIQAR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Z Nazim (Counsel)

For the Respondent: Mr Bramble (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. The appellants appeal against the decision of the First Tier Tribunal (Judge MR Oliver) (FtT) promulgated on 30th May 2017 in which the appeal against the respondent's decision refusing their application for ILR (long residence based on 10 years) was dismissed. The respondent's decision was made on 20th January 2016.

Background

2. The appellants are citizens of Pakistan. The main appellant arrived in the UK as a student in 2004 and he married his first wife who was an EEA resident. He was granted a family residence permit valid from March 2011 to March 2016. They divorced on 1 November 2013. He applied for permanent residence on 20th December 2013 which was refused. His appeal was initially struck out but at the hearing it was confirmed by the Respondent that the appellant had retained a right of residence and that his residence permit was valid. The appeal was withdrawn accordingly. He applied in March 2015 on the basis of long residence. His second wife had joined him in the UK in March 2015.
3. The respondent refused the long residence application on the grounds that the appellant's residence as an EU family member did not count towards his long term residence in the UK under the Immigration Rules. His EEA spouse had not shown that she was qualified for the relevant period of time. His new wife could not show that she was married to someone that was settled in the UK. There was no dispute that the appellant had leave continuously until 2010.

First tier decision

4. The FtT accepted the position argued by the respondent, namely that periods of residence under the EEA Regulations could not count towards the Immigration rules [9]. And further found that his ex wife had failed to show she was working for the period on which the residence card was issued [9]. Consideration was given to family life under the Rules and to the best interests of the child which the FtT rejected.

Grounds of appeal

5. In grounds of appeal the appellant argued that the FtT erred by failing to treat the appellant as a person with a right of residence retained since his divorce. The only issue was evidence of the appellant working at the time of the divorce. The respondent has a policy to treat residence under the EEA Regulations as applying under the Immigration Rules.

Permission to appeal

6. Permission to appeal to the Upper Tribunal (UT) was granted on renewal by UTJ Gill. In granting permission the UTJ drew attention to the respondent's policy which the FtT had failed to consider. The appeal was a human rights appeal rather than under EEA Regulations.

Submissions

7. At the hearing before me Mr Nazim relied on the grounds of appeal and argued that the appellant had provided the evidence of his employment at the time of the divorce. Mr Bramble conceded that the appeal ought to be allowed for the main appellant and that the FtT failed to get to grips with the main issue under appeal. Mr Nazim submitted that in respect of the second appellant, that as the application was

under the old rules it remained possible for the matter to be reconsidered by the respondent.

Discussion and conclusion

8. There is a material error of law in the decision which shall be set aside. The appellants have made out the grounds of appeal. There was no dispute as to the error in law. The FtT erred in law by failing to properly consider the application of residence periods under the EEA Regulations with reference to the respondent's policy that such period could count towards residence under the Rules. The appeal was a human rights matter and not an EEA appeal. There was evidence available to the FtT to show that the appellant was self employed as an Uber taxi driver at the time of his divorce. The first appellant has shown that he has 10 years continuous leave in the UK. It was accepted that the appellant was married to his wife and that they had a child in the UK. No other issues were raised. Given that the appellant had not at this stage been granted leave as a settled person, the appeal by his wife as a dependent remained to be considered on that basis. Both representatives agreed that the matter should be reconsidered by the respondent.

Re making

9. I remake the decision in respect of the first appellant and allow the appeal. In respect of the second appellant the matter is to be reconsidered by the respondent in the light of the first appellant's appeal having been allowed.

Decision

10. Error of law found and the decision is set aside.

The appeal of the first appellant is allowed and for the second appellant to be reconsidered by the Secretary of State.

Signed

Date 6.4.2018

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

As I have allowed the appeal of the first appellant and the issues were in the main agreed by the respondent, I have decided to make a fee award of £100.00.

Signed

Date 6.4.2018

GA Black
Deputy Judge of the Upper Tribunal