



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/00451/2017
EA/00447/2017
EA/03885/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 21st August 2018

Decision & Reasons Promulgated
On 28th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

(1) MOHAMMAD [B]

(2) [A U¹]

(3) [A U²]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr A McVeety (Senior HOPO)

For the Respondents: Mr Salam (Solicitor)

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Herwald, promulgated on 6th February 2018, following a hearing in Manchester on 19th January 2018. In the decision, the judge dismissed the appeal of the Sponsor, Mr [B], but allowed the appeals of [AU²] and [AU¹]. The Respondent, Secretary of State, applied

for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me. For convenience I will refer to the parties as they were referred to in the First-tier Tribunal.

The Appellants

2. The lead Appellant in this appeal, Mohammad [B], is a German national. He was born on 15th December 1955. The remaining two Appellants are citizens of Pakistan. [AU¹] was born on 1st April 2014, and her brother, [AU²], was born on August 2012.

The Appellants' Claim

3. The essence of the second and third Appellants' claim was that they sought the right to reside in the UK on the basis of the fact that their grandfather, Mohammad [B], was a German national, and that they were his granddaughter and grandson respectively. They were his direct descendants. It is important to note, however, that the applications by the two children were made not on the same basis. The application by the granddaughter, [AU¹], was made for a *residence card*. The application for [AU²], was made on the basis of a request for *permanent residence*.

The Judge's Findings

4. At the hearing before Judge Herwald, it transpired that, although the Sponsor had not in the past been able to demonstrate, (given the gap in his unemployment), that he had been a qualified person, exercising treaty rights for the required duration of his time in the UK, the fact was that at the time of the hearing, there had been evidence that he had been working for a company called Aliyza Ltd, from whom he received a salary. There was no contract of employment. However, the Sponsor received payslips and he had a P60 certificate (see page 59 of the bundle). His period of employment shows him earning £40 and £286.45 (see paragraph 16(d)). Therefore, Judge Herwald was satisfied, on the basis of the P60s and the wage slips, that the first Appellant was working at least in March 2017, in employment that would not be described as "marginal" work. He was genuinely employed. Therefore, the benefit of his employment could be extended to his grandchildren as direct descendants (paragraph 16(h)).
5. On this basis, the judge went on to express himself in terms therefore, "I dismiss the appeal in relation to the Sponsor Mr [B], and I allow the appeals by [AU²] and [AU¹]" (see Notice of Decisions).
6. At the hearing before me on 21st August 2018, there was agreement between Mr McVeety, for the Respondent Secretary of State and Mr Salam, appearing on behalf of the Appellants, that the judge had erred in expressing himself in the way that he had. Presently the position was that, because [AU¹], had applied for a residence card, this had been granted. However, the application of [AU²], had not been granted because he had applied for a permanent residence card. What he ought to have done, and what he qualified for, was a five year residence permit. The judge, had created an ambiguity as to what it was that the appeals were being allowed in respect of when he had expressed himself, by stating that, "I allow the appeals by [AU²] and [AU¹]."

Mr Salam agreed, that I should make a finding of an error of law, and record the fact that the application was for a five year residency.

Error of Law

7. Given the consensus between the parties before me, I find that the decision of the judge will have involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside. As Mr McVeety pointed out, to all intents and purposes, there is only one appeal before this Tribunal, namely, that of [AU²]. As far as his sister, [AU¹], is concerned, she has been granted a 'residence card' because this is all she was applying for. The Appellant, [AU²], whose appeal was the only effective appeal before this Tribunal, should not have had his appeal allowed outright. That being so, I make a finding of an error of law, and express the hope, that the appropriate decision to be made by the Secretary of State hereafter is for a grant of a residence permit, on the same basis, as has been granted to [AU¹], for a five year period. He is not entitled to permanent residence as of yet.

Remaking the Decision

8. I remake the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing the appeal by the Secretary of State for the reasons that I have given above. The first Appellant is entitled to a grant of a residence permit for five-years, should he make an application on that basis, but he is not entitled to permanent residency.
9. There has been a delay in sending out this Determination to the parties concerned, because although it was dictated on the day of the Hearing, and typed up shortly thereafter, it appears to have been held up in the system, before promulgation.

Notice of Decision

10. For the foregoing reasons, my decision is as follows:
11. The making of the previous decision in relation to the second and third appellants involved the making of an error on a point of law.
12. I do not set aside the previous decision in relation to the second appellant, as the Secretary of State has granted her a residence card.
13. I set aside the previous decision in relation to the third appellant.
14. I remake the decision by dismissing the third appellant's appeal against the respondent's decision to refuse him a permanent right of residence.
15. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

26th February 2019