



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/07176/2018

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 8th October 2019**

**Decision & Reasons Promulgated
On: 14th October 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Tanvir Mirza
(anonymity direction not made)**

Appellant

and

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Shah, 786 Law Associates

**For the Respondent: Mr McVeety, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on the 13th January 1963. He appeals with permission against the decision of the First-tier Tribunal (Judge Hobson) dated the 7th February 2019 to dismiss his appeal under the Immigration (European Economic Area) Regulations 2016. The Appellant asserts a *Surinder Singh* right of residence under Regulation 9 as the family member of his British wife.

2. Given the facts I can be brief. Although Judge Hobson accepted that the Appellant and his wife did live and work in the Republic of Ireland between 2015 and 2016 he dismissed the appeal on the grounds that the couple had not “genuinely” transferred their lives to the member state.
3. The Appellant appealed on the grounds that the First-tier Tribunal had erred in law in its interpretation of the relevant regulation, or rather the underlying provisions of the Directive. The written grounds of appeal placed reliance on the decision in O and B v The Netherlands C456/12, but by the time that the appeal came before me the Appellant was also able to rely on the decision of the Upper Tribunal in ZA (Reg 9 EEA Regs, abuse of rights) Afghanistan [2019] UKUT 281 (IAC).
4. Before me Mr McVeety accepted that ZA is a reported decision, and that if it is correct, the Appellant must win his appeal. He nevertheless informed me that the ratio of ZA, if not ZA itself, is a matter presently before the Court of Appeal, listed for hearing in mid-December. Accordingly the Secretary of State requests that this appeal be adjourned. Mr Shah for the Appellant resisted the application for an adjournment, on the grounds, presumably, that a bird in the hand is better than two in the bush. He did so it having been explained to Mr and Mrs Mirza that the Respondent may well apply for permission to appeal to the Court of Appeal against my decision.
5. I determined that the appeal should proceed. ZA is, at present, a reported UT decision which is consistent with the authority of O & B. As the law stands at the date of the hearing before me, the Appellant must succeed in his appeal, since his 14 months residence in Ireland, where both he and his wife lived and worked, constituted real, effective and substantive residence in that host member state such that the Surinder Singh criteria are fulfilled. Whether the Secretary of State wishes to appeal is a matter for her.

Decisions

6. The decision of the First-tier Tribunal contains material errors of law and it is set aside.
7. The decision in the appeal is remade as follows: the appeal is allowed under the Immigration (European Economic Area) Regulations 2016.
8. There is no order for anonymity.

CBE

Upper Tribunal Judge Bruce
8th October 2019