



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

Appeal Number: OA/04763/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 March 2015**

**Decision & Reasons Promulgated
On 16 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MRS UMIT SHERIDAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Umit Sheridan, is a citizen of Turkey and her date of birth is 27 March 1981. She made an application for an EEA family permit pursuant to Regulation 12 of the Immigration (EEA) Regulations 2006.
2. The appellant and her husband, the sponsor, Paul Sheridan, live together in Austria. The sponsor is a British citizen. The respondent refused the application in a decision of 5 March 2014. This decision is incomplete. From the determination of Judge Howard it appears that a copy of a decision was provided to the appellant on 24 March 2014 giving reasons

for the decision of the respondent, namely that the respondent was not satisfied that the sponsor is an EU national or that he is exercising treaty rights.

3. The appellant appealed against the decision of the ECO and the appeal was dismissed by Judge of the First-tier Tribunal Howard, who determined the appeal on the papers at the request of the appellant. The Judge in his findings indicated that he had considered all the material before him although he did not specify what the material was or what it comprised. He referred to the appellant having submitted a copy of her husband's birth certificate and passport and he was satisfied that the sponsor is an EU national and he went on to identify the issue as to whether or not the sponsor was exercising treaty rights and he found that there was no evidence to suggest that he was. On this basis he dismissed the appeal under the 2006 Regulations.
4. Permission to appeal was granted to the appellant by Designated Judge of the First-tier Tribunal Coates in a decision of 3 February 2015. He referred to the appellant's handwritten application for permission and documents on the Tribunal file which are referred to in the application. He went on to note that Judge Howard had not referred to these documents and he granted permission on the basis that it was arguable that the Judge had not taken into account this evidence.
5. On 13 February 2015 the parties were issued with directions by the Upper Tribunal. There was no refusal notice or complete Home Office bundle and directions were made for the parties to file and serve upon the other parties any documentary evidence upon which reliance is placed even if that material has been previously served. No evidence was forthcoming from either party following the direction.
6. I am not satisfied that the documents referred to by Judge Coates were before the First-tier Tribunal. The appellant in these proceedings did not submit a bundle. The documents referred to by the First-tier Tribunal are the documents that the appellant submitted with her application. I note that at least one of the documents has a date on it which is post the date of the hearing before the First-tier Tribunal which was on 9 October 2014. It is clear that the documents now relied upon relating to the sponsor's employment and financial position were submitted with the application for permission.
7. The Judge cannot be blamed for failing to take into account evidence that was not before him. There was no evidence before him that the sponsor was exercising treaty rights. The documents that have now been submitted appear to me to be a residence permit relating to the sponsor, a registration document and documents relating to property ownership and accounts. There is also a document relating to a company. Certain words have been translated into English, presumably by the appellant or the sponsor, but the documents have not been properly translated into English and would therefore require a degree of speculation by a decision-maker

who was not fluent in German. It may well be that the documents are sufficient to establish that the sponsor was at the relevant time exercising treaty rights but there are no witness statements from either the appellant or the sponsor and no translation of the documents. In any event, the evidence is not material to the issue which is whether there is a material error of law.

8. It is of course open to the appellant to make a further application submitting documents to support the sponsor exercising treaty rights. She would of course have to satisfy Regulation 9 subject to the transitional arrangements. The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013 were amended on 1 January 2014 to include a new threshold test to tighten the circumstances in which family members of British citizens can rely on the ECJ judgment in **Surinder Singh C-370/90**. The judgment has been implemented by way of Regulation 9 of the 2006 Regulations.
9. There is no error of law in the decision of the First-tier Tribunal. The decision to dismiss the appeal under the 2006 Regulations is maintained.

Signed: Joanna McWilliam

Dated: 13 April 2015

Deputy Upper Tribunal Judge McWilliam