



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

Appeal Number: EA/00583/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
On 13th September 2018**

**Determination issued
On 26th September 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RUBINA IQBAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr M Shoaib, of Shoaib Associates
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 21 December 2015, refusing the appellant's application for a residence card.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Farrelly, promulgated on 19 June 2017.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 3 July 2017.
 - (v) The grant of permission by FtT Judge Hodgkinson, dated 28 December 2017.
2. Mr Shoaib submitted that the absence of a response from the SSHD under rule 24 showed that the FtT's decision was materially wrong. He referred to the various documents on which the appellant had relied in the FtT, relating to registration, licensing and trade associations in Belgium, a fee paid on closing the business, a

certificate of no tax due, the resale of the sponsor's business at a loss of 3000 euros, and residence permits in Belgium. He submitted that there was no reason for the appellant to invent a case under the regulations, when she could have qualified through earnings under the immigration rules. Previous representatives had advised the appellant and sponsor to proceed based on treaty rights rather than under the rules. He said that the appeal (as brought to the FtT) should be allowed.

3. Mr Govan accepted that no rule 24 response had been made, but said that the appeal was nevertheless opposed, for the following reasons. There was a difference between formally setting up a business and being economically active. The respondent's decision was based on insufficiency of evidence of trading. The appellant was on notice of that issue throughout. The appellant criticised the observation at paragraph 13 that the documentation provided by the appellant was minimal, but that was followed by specific analysis of what was provided to show that it went to registration not to trading. There was delay in the FtT, where the hearing took place on 7 March 2017, but nothing to show that impacted on the decision, which should stand.
4. In reply Mr Shoaib said that the sponsor spoke little French or Flemish but enough to run the business; it had been run on a paperless basis; as the bank accounts had been closed, no records could now be obtained; and that the Belgian government records of starting and closing the business, and of residence cards, were "clear evidence of trading".
5. I reserved my decision.
6. The first ground of appeal, "irrational findings of facts", is only disagreement. It specifies nothing which might amount to error on a point of law.
7. The second ground, "erroneous assessment of evidence", says that evidence was overlooked, but relies on reference to evidence of registration not of trading, and does not grapple with the distinction between the two.
8. The second ground goes on to take a point of delay, but fails to identify any evidence allegedly overlooked which bore on the conclusion reached. There was undesirable delay, but nothing to show that it renders the decision unsafe.
9. The FtT's decision was reached on the view that the appellant's evidence went to formalities of registration rather than of economic activity. The grounds and submissions repeat the case put to the FtT, but do not show that analysis to have involved the making of any error on a point of law.
10. The decision of the First-tier Tribunal shall stand.
11. No anonymity direction has been requested or made.



25 September 2018
Upper Tribunal Judge Macleman