



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01970/2017

THE IMMIGRATION ACTS

Heard at Manchester
On May 18, 2018

Decision & Reasons Promulgated
On May 23, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[T O]

~~(NO ANONYMITY DIRECTION MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lathwell, Solicitor

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is a Spanish national and he had applied on May 6, 2016 for a registration certificate under Regulation 16 of the Immigration (European Economic Area) Regulations 2006 confirming his right to reside in the United Kingdom.

3. The respondent refused the application on October 31, 2016 because he was not satisfied that the appellant was a family member of an EEA national or that his parent was exercising treaty rights in the United Kingdom.
4. The appellant appealed that decision on February 17, 2017 under Regulation 26 of the Immigration (European Economic Area) Regulations 2006 and Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. Although the appeal was lodged late, time was extended by Judge of the First-tier Tribunal Borsada pursuant to Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
6. The appeal came before Judge of the First-tier Tribunal Tobin (hereinafter called "the Judge") on October 18, 2017 and in a decision promulgated on November 9, 2017 the Judge rejected the appellant's appeal as he was not satisfied with the identity of the appellant's "claimed" father.
7. The appellant applied for permission to appeal on November 18, 2017 and on March 29, 2018 Judge of the First-tier Tribunal Davidge granted permission to appeal on the basis that it was arguable the Judge gave inadequate reasoning in the context of the dispute.
8. Since lodging the appeal papers the appellant's father, on the appellant's behalf, has provided a DNA report and has also instructed the Royal College of Nursing. Their legal department has submitted a bundle of documents together with amended grounds.
9. Ordinarily, amended grounds should not be considered by the Tribunal because the permission to appeal is what the Tribunal is concerned with but one of the issues raised is a Robinson obvious point namely something the Judge should have dealt with at the original hearing.
10. The respondent had not disputed the appellant's alleged father and mother were married and it was also accepted the Sponsor is an EEA national.
11. The appellant has Spanish citizenship and Mr Bates indicated, at the outset of the hearing, that the Judge should have considered the appeal not only on the basis he was living with his alleged father but also on the basis that his mother was already resident in the United Kingdom and living with an EEA national.
12. Regulation 7 of the 2006 Regulations makes clear that the child of an EEA national or his spouse is a family member where they are under the age of 21 or a dependent.
13. Mr Bates accepted that the Judge had materially erred, regardless of any of the other grounds of appeal, by failing to address this issue at the original hearing and that in the circumstances he accepted there was a material error in law and that the decision should be set aside and the appellant granted the registration certificate pursuant to Regulation 16 of the 2006 Regulations.

14. I asked Miss Lathwell whether she had any objections to this course of action and she confirmed that she did not.
15. Based on the above facts I am satisfied there is a material error in law. Whilst the Judge considered the appeal with regard to the appellant's father he overlooked the fact that the child's mother was resident in United Kingdom and married to the person who he claimed was his father and regardless of any concerns that may have existed with the documentation the Judge should have concluded the Regulation was met based on the relationship with his mother.

DECISION

16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
17. I have set aside the original decision and I remake the decision by finding the appellant is entitled to a residence card under Regulation 16 of the 2006 Regulations.

Signed

Date 18/05/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because no refund of fees was requested.

Signed

Date 18/05/2018



Deputy Upper Tribunal Judge Alis