



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06700/2017

THE IMMIGRATION ACTS

Heard at: Manchester CJC
On: 12 October 2018

Decision Promulgated
On: 18 October 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

FOUZIA GASEMI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Johnrose, Ellen Court Partnership Solicitors
For the respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant, a citizen of Afghanistan, has appealed against a decision of the First-tier Tribunal ('FTT') dated 6 November 2017, in which it dismissed an appeal against a decision of the respondent dated 10 July 2017 refusing to grant her a residence card as a family member of her British citizen spouse ('the sponsor'), who claimed to have exercised Treaty rights in another EU member state. The respondent did not accept that the couple's residence in Ireland was genuine and concluded that it was to artificially create conditions to allow the appellant to remain in the UK.

Background facts

2. The appellant married the sponsor in Afghanistan in 2009. They have a British citizen child, born in Afghanistan in 2014. After their marriage the sponsor remained living in the UK but visited his wife in Pakistan.
3. The sponsor claims to have relocated to Waterford, Ireland in December 2014. The appellant and their child joined him there on 28 June 2015, having obtained an EEA family permit. They left Ireland in July 2016, returning to live together in Preston in the same house the sponsor resided in prior to moving to Ireland.

Appeal to the Upper Tribunal

4. In grounds of appeal lodged on behalf of the appellant it was argued that the FTT included mistaken facts in the decision, which led to unfairness and failed to take into account relevant evidence, which led to conclusions unsupported by the evidence.
5. In a decision dated 8 August 2018 FTT Judge Adio considered the grounds of appeal arguable, observing inter alia, *“there is a clear mistake in identity and mistake of facts in some of the evidence in this appeal”*.
6. Although the SSHD served a rule 24 notice, which submitted that the reference to irrelevant factual matters in the decision was not material, Mrs Aboni accepted at the hearing before me that the FTT’s mistakes, when viewed in the round were material errors of law such that the decision must be set aside and remade by the FTT on a de novo basis.

Discussion

7. It is important to acknowledge that for the most part the FTT decision is carefully drafted and includes cogent reasons for finding that the sponsor did not transfer his life to Ireland, before returning to the UK. However, as acknowledged by Mrs Aboni the decision also contains mistakes set out below.
8. First, at [12] and [13] of the decision, the FTT refers to an entirely separate decision letter and describes parties and their circumstances by name, completely unrelated to the instant appeal. The FTT has clearly included these paragraphs in error. If an isolated error, it may not be sufficient to cause the decision to be set aside but it must be viewed with the other concerns outlined below.
9. Second, at [23(ii)] the FTT refers to the appellant using his Preston address when communicating with the respondent in January 2015. The FTT appears to have made the innocent mistake of referring to the sponsor as the appellant. Of more significance is the FTT’s finding in the same paragraph that the sponsor’s correspondence relating to the HMRC was all directed to the Preston address

suggesting he had not transferred the centre of his life to Ireland. As Ms Johnrose correctly pointed out in the grounds of appeal and as accepted by Mrs Aboni, the HMRC correspondence is only dated either 2014 or 2017. In other words, the absence of HMRC correspondence to the Preston address for the time the sponsor was in Ireland in 2015-16 supports rather than undermines his claim. This is consistent with his self-employed accounts for when he was working as a taxi-driver in the UK, which only cover the years ending 2013, 2014 and 2017 and the evidence of correspondence with the Irish Revenue office regarding tax credits in 2016 (pgs 57-60).

10. Third, at [23(iii)] the FTT rejected the sponsor's claim that by placing his property for sale at £110,000 he genuinely intended to sell it, as it was reduced to £80,000 suggesting an inflated price. This finding fails to acknowledge the evidence contained in an email dated 6 March 2017 (pg 105) from the estate agent that refers to apparently recent discussions that resulted in them "now marketing" the property at a revised price of £80,000. The FTT has not engaged with this evidence or adequately explained why the sale was not genuine when the property continued to be marketed for sale many months after the sponsor's departure from Ireland and return to Preston.
11. It is difficult to separate these errors from the other factual findings. After all it is all the factors set out at [23(i) to (vii)] that the FTT took into account in reaching its decision. In the circumstances, Mrs Aboni was correct to concede that there was a material error of law in the FTT decision.

Disposal

12. Both representatives agreed that the decision should be remade by the FTT. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT.

Decision

13. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.
14. The appeal shall be remade by FTT de novo.

Signed: Ms Melanie Plimmer
Judge of the Upper Tribunal

Dated: 12 October 2018