IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06249/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21 May 2015

Decision & Reasons Promulgated
On 1 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS NATALIA ZAFAR
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as "the respondent" and Ms Zafar as "the appellant".

2. No application for anonymity has been made in these proceedings and no grounds for such an order were put before me today.

3. The appellant is a citizen of Pakistan born on 2 October 1989.

4. She applied for a residence card as confirmation of the right to reside in the United Kingdom as the spouse of an EEA national exercising Community Law rights. That application was refused and the appellant appealed.

5. Following a hearing at Taylor House Judge of the First-tier Tribunal Russell, in a decision promulgated on 11 September 2014, allowed the appellant's appeal. At that hearing evidence was heard from both the appellant and sponsor, a Russian speaking Lithuanian.

6. The respondent sought permission to appeal. Judge of the First-tier Tribunal Cruthers granted permission on 21 October 2014. His reasons for so doing are:

> "1. By a determination promulgated on 11 September 2014, First-tier Tribunal Judge Russell allowed this appeal. Having assessed the evidence, the judge concluded that the appeal succeeded through the application of Regulation 8 of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").
>
> 2. The grounds on which the respondent seeks permission to appeal complain, in summary that: (1) once it was apparent that the Lithuanian "sponsor" was having difficulty in using the English language for his evidence , the judge should have adjourned the hearing so that a court interpreter could be arranged. It is suggested that it was inappropriate for the judge to use his own Russian language ability in the course of the sponsor's evidence (see paragraph 3 of the determination and paragraphs 1 to 3 of the grounds); and (2) that in itself a finding of a "durable relationship" was not a sufficient basis to establish entitlement to a residence permit – reference is made to **YB (EEA reg 17(4) – proper approach) Ivory Coast [2008] UKAIT 00062**, circulated on 13 August 2008.
>
> 3. The grounds are arguable."

7. Thus the appeal came before me today.

8. Mr Avery referred me to a note signed by the Presenting Officer in the First-tier hearing where it states, amongst other things, that the judge acted as interpreter in a language which was unclear to the Home Office Presenting Officer by reason of being uncertain as to whether it was Russian or Lithuanian. This was in the course of the sponsor giving his evidence and happened on at least five occasions.

9. It was asserted by Mr Avery that in so doing the judge erred in law by conducting the appeal in a procedurally unfair manner. I was directed to paragraph 3 of the judge's decision where it states:

> "The appellant gave evidence in English throughout and her partner gave evidence in English and, with my assistance, sometimes in Russian, a language I speak."

10. Mr Avery contended that the Secretary of State is unaware of the judge's qualifications as a court interpreter or the level of his proficiency so that

there can be any certainty as to the accuracy. He argued the judge ought to have adjourned the hearing as soon as the sponsor had difficulty understanding or responding to questions rather than take the role of an interpreter himself.

11. There is a second ground of appeal which is that the judge misdirected himself in law by finding that the appellant is "entitled" to a residence card. However, in light of my findings in relation to the first ground any consideration of this latter one is a redundant exercise.

12. I emphasised to the appellant, as she was unrepresented, that this procedural unfairness was not of her making. The judge was undoubtedly using his best endeavours to assist an unrepresented party.

13. However, whilst I fully accept that the judge acted with the best of intentions he has nonetheless fallen into error. I am satisfied that the correct procedure in these circumstances was for the judge, of his own motion, to have adjourned the hearing and secured the assistance of a Russian interpreter so that the evidence could be properly taken. The answers, in all the circumstances, of the sponsor are, as a consequence, unsafe rendering likewise the findings of the judge. This infects the whole decision rendering any further consideration by me of the second ground, as I say, redundant.

14. For these reasons I find the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. Mr Avery urged me to remit the appeal back to the First-tier Tribunal as in all the circumstances one party, the respondent, had been deprived of a fair hearing within the First-tier Tribunal. I agreed with that submission.

Decision

I therefore set aside the decision. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal, Courts and Enforcement Act 2007 and Practice Statement 7.2.(b) before any other judge aside from Judge Russell.

An anonymity order is not made.

Signed Date 28 May 2015.

Deputy Upper Tribunal Judge Appleyard