



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

Appeal Number: IA/10751/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th January 2015**

**Determination
Promulgated
On 4th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ALI HOSSEN
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Shilladay, Home Office Presenting Officer

For the Respondent: Mr M Biggs, Counsel, instructed by Universal Solicitors

DETERMINATION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Bangladesh born on 2nd January 1991. He married Ms Susana Rahman, a citizen of Germany on 26th July 2013. On 1st October 2013 he applied for a residence card as the family member (husband) of Ms Rahman who he said was a jobseeker in the UK. This was

refused on 13th February 2014 because it was not accepted that Ms Rahman was actively seeking work and had genuine chances of becoming employed in the foreseeable future. The appellant appealed this decision on 27th February 2014. His appeal against the decision was allowed by First-tier Tribunal Judge Traynor in a determination promulgated on the 4th November 2014. It was accepted by Judge Traynor that Ms Rahman was a job-seeker but not that she was (as she and the appellant claimed) employed at the date of hearing.

3. Permission to appeal was granted by Judge of the First-tier Tribunal Cruthers on 15th December 2014 on the basis that it was arguable that the First-tier judge had erred in law in not making findings as to how long Ms Rahman had been seeking work and in explaining why he found that she had genuine chances of being engaged in employment in accordance with Antonissen C-292/89 ECJ.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

The Hearing

5. At the hearing it was agreed that there should be a short adjournment so Mr Shilladay could check the new evidence produced by the appellant (said to show that Ms Rahman was indeed working in the UK) with the Department of Work and Pensions.
6. Mr Shilladay confirmed that that it was accepted following his checks with the Department of Work and Pensions that Ms Rahman had been working since 1st October 2014.
7. Mr Biggs applied to admit the new evidence regarding Ms Rahman's work under Rule 15 (2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, as I am entitled to do under Rule 5 despite procedures not have been complied with for the submission of new evidence. Mr Shilladay did not oppose this application and I admitted this evidence.
8. I told the parties I would dismiss the appeal as there was no material error of law in the determination of Judge Traynor in the light of the new evidence and Mr Shilladay's checks.

Conclusions

9. I find that as Ms Rahman is clearly a German citizen working in the UK and as it is accepted by all parties that she is married to the appellant there could be no material error of law in the First-tier Tribunal allowing the appeal under the Immigration (EEA) Regulations 2006 on the basis the appellant was entitled to a residence card.

Decision

10. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
11. The decision of the First-tier Tribunal is upheld.

Deputy Upper Tribunal Judge Lindsley

30th January 2015