IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24276/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 May 2015	**On 19 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MR ENKH-OD SHOOVDER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

IMMIGRATION OFFICER

Respondent

Representation:
For the Appellant: Ms D Revill (Counsel instructed by Aslam Law Associates)
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision and reasons of First-tier Tribunal (Judge Hawden-Beal) who in a determination on the papers and promulgated on 22 July 2014, dismissed the appellant's appeal under the Immigration and EEA Rules, following a decision by the Secretary of State refusing to allow him to re-enter the UK and revoking his family permit issued under EEA Regulations.

2. The appellant is a citizen of Mongolia and his date of birth is 11 May 1975.

3. He was granted a residence card as the family member (spouse) of an EEA national exercising treaty rights. The appellant left the UK and returned on 13 June 2014 arriving at Stansted Airport where an Immigration Officer made an immigration decision to refuse him entry into the UK and revoking his EEA family permit in accordance with Regulation 19 of the EEA Regulations. The Immigration Officer relied on the appellant's admission that he had separated from his spouse and that there was no prospect of reconciliation.

4. The First-tier Tribunal dismissed the appeal. The Tribunal considered that it had been hampered by a lack of documentation from both parties. The Tribunal found that the appellant could not be said to be "joining" his spouse in the UK, under Regulation 19, in light of the fact that the parties were separated. The Tribunal nevertheless found that the appellant came within the definition of a family member.

Grounds of Application

5. In grounds of appeal the appellant argued that the Tribunal erred in law by mistakenly treating the residence card issued to the appellant as an EEA family permit. It was argued that this mistake was founded on the respondent's decision under Regulation 19 which was an incorrect application of that Regulation. The decision to revoke the residence card was unlawful given that the appellant was a family member of an EEA national exercising treaty rights under Regulation 20(4)(8).

6. The second ground argued was that the Tribunal erred by misinterpreting the word "joining" under Regulation 19(2) to mean "physically" joining the same household. It was asserted that the proper interpretation was to join as in be present in the UK.

Permission to Appeal

7. Permission to appeal was initially refused by the First-tier Tribunal. The application was then renewed to the Upper Tribunal and granted by Senior Immigration Judge Allen who found an arguable case in respect of ground 1.

Error of Law Hearing

8. At the hearing before me I heard submissions from both representatives. Ms Revill provided a detailed skeleton argument supported by relevant case law. Mr Nath relied on the refusal letter but acknowledged that the Tribunal had not been assisted in reaching its decision given the lack of documentation and evidence available to it for consideration.

Discussion and Decision

9. At the end of the hearing I allowed the appeal. I find that there was a material error of law. I set aside the decision made.

10. I am satisfied that the Tribunal firstly erred by mistakenly reaching the view that the appellant was issued with a family permit rather than a residence card. It was common ground that the appellant had indeed been granted a residence card valid for a period of five years. Grounds for revocation of a residence card are limited and are set out in Regulation

20(4) of the EEA Regulations. Having made this error the Tribunal misapplied Regulations that were not applicable to a family residence card. Secondly, I am satisfied that the interpretation given by the Tribunal to the words "joining" was an interpretation that was restrictive and wrong. The Tribunal correctly found that the appellant was a family member of an EEA national exercising treaty rights. There was no evidence that the parties were divorced and/or that the spouse was not exercising treaty rights in the UK.

Re making the decision

11. Having found material errors of law I now propose to remake the decision. As the appellant was issued with a residence card I find that there was no basis for the revocation and I direct that there be a reinstatement the residence card. I find that the appellant was joining his spouse in the UK. The interpretation of the word "joining" means physical presence in the UK rather than any physical presence in the EEA national's household. This view is clearly supported in case law which was cited and relied on by the appellant in the skeleton argument including **Samsam (EEA: revocation and retained rights) Syria [2011] UKUT 00165 (IAC)**, **PM (EEA – spouse – "residing with") Turkey [2011] UKUT 89 (IAC)**, **Diatta 276/83** and **Ogieriakhi v Minister for Justice and Equality and Others (C-244/13)**. I find that although the appellant and his spouse had separated, he has not lost his status as the spouse of an EEA national as the parties remain married. The residence card shall be reinstated and the decision refusing entry into the UK revoked.

Notice of Decision

12. Accordingly I set aside the decision. I remake the decision by allowing the appeal under the Immigration Rules with reference to the EEA Regulations.

No anonymity order.

Signed Date 14.5.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award. The reason for the fee award is that the respondent applied the incorrect Regulations and misapplied the law in reaching a decision.

Signed Date 14.5.2015

Deputy Upper Tribunal Judge G A Black