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

Appeal Number: IA/24333/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2015**

**Decision and Reasons
Promulgated
On 10 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**MRS SHAUKAT SULTANA MIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Janjua of Morden Solicitors (London)

For the respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who appealed against the decision on 22 April 2014 to refuse her a permanent residence card under Regulation 15 of the Immigration (EEA) Regulations 2006. Following a hearing on 29 January 2015, her appeal was allowed by Judge of the First-tier Tribunal J Bartlett ("the FTTJ") in a decision promulgated on 12 February 2015.
2. I refer to the parties as they were in the First-tier Tribunal though the Secretary of State is appealing in these proceedings.

3. The appellant has made no application for anonymity and no such direction was made by the FTTJ. I see no need for such a direction in this tribunal.
4. Permission to appeal was granted by Judge of the First-tier Tribunal Ransley on 14 April 2015. In particular, he noted that the FTTJ referred erroneously to Regulation 7 in paragraph 17. Hence the matter comes before me.

The Submissions

5. Mr Avery submitted that the refusal had been under Regulation 15 of the EEA Regulations yet the FTTJ had referred to the appellant being “successful under Regulation 7” which was not the correct regulation. Furthermore, the FTTJ had found that the appellant’s husband had been exercising treaty rights “under a self-employed basis since 1 February 2015”. This was, he submitted, an error of law because the hearing had taken place prior to that date. He also noted a typographical error in paragraph 13 which refers to an income and expenditure account for the period “from 1 April 2013 to 31 March 2013”. In addition, apart from these errors, the FTTJ’s references to the appellant’s documentary evidence suggested that it remained insufficient. Mr Avery submitted that the decision was confusing, unclear and erroneous.
6. Mr Janjua agreed that there were a number of typographical errors in the decision but submitted that these did not impact on the decision which was not perverse; taking the decision overall, the decision was clear and identified the relevant issues by reference to the correct regulation.
7. Mr Avery confirmed, in reply, that he did not submit the decision was perverse, merely that it was so unclear as to amount to a material error of law.

Discussion

8. The FTTJ’s decision contains two apparent incongruities. The first of these is in paragraph 13 where she refers to an “income and expenditure account prepared by Azed & Co Certified Public Accountants in respect of the period from **1 April 2013 to 31 March 2013**” (emphasis added). She goes on to list in detail various other documents submitted by the appellant to demonstrate her husband’s self-employment history including self-assessment forms and accountancy documents dating back to 1 February 2010. The appellant’s bundle provided for the hearing includes an income and expenditure account for the period 1 April 2013 - 31 March 2014. For these reasons, the date of 31 March 2013 must be a typographical error and should read 31 March 2014.
9. In paragraph 15 the FTTJ states that she is satisfied “the appellant husband [sic] is exercising treaty rights and that he has been doing so under a self-employed basis **since 1 February 2015**” (emphasis added). The hearing took place on 28 January and although the decision was promulgated on 12 February 2015, the date of 1 February 2015 is clearly an error as it has no basis in the evidence and simply does not make sense. It is clear that this is a typographical error because in the

preceding paragraph the FTTJ notes that the appellant had provided accounts for the period 1 February 2010 to 5 April 2010 and, further, because she refers in paragraph 4 to the appellant's evidence that her husband had been working as a self-employed minicab driver since 1 February 2010. Taking the decision as a whole, the FTTJ made a typographical error in referring to 2015; the correct date, as in the evidence which she had accepted in paragraph 15, is 2010.

10. The FTTJ also accepted that the appellant's husband had been employed, as claimed, prior to 1 February 2010 at an accountancy firm, Sarmad & Co.
11. In paragraph 1 the FTTJ noted that the basis of the application was that the appellant's husband had been exercising Treaty rights in the UK for a period of five years "in accordance with the Immigration (EEA) Regulations 2006". Whilst there is no reference in that paragraph to regulation 15, it is implicit from the terms of that paragraph that this is the relevant regulation. Indeed the FTTJ goes on to assess the evidence with that timeframe in mind. She concludes that he had been employed prior to 1 February 2010 and self-employed thereafter. Thus, implicitly, she found that, by 29 January 2015 (the date of hearing), he had been exercising Treaty rights in the UK for a period in excess of five years. It is very unfortunate that the FTTJ concluded in paragraph 17 that the appeal was "successful under Regulation 7 of the Immigration (EEA) Regulations 2006" but it is clear from the totality of the decision and the FTTJ's reasons that she applied the criteria in Regulation 15(1)(b), as stated in the notice of decision and reasons for refusal.
12. I take into account Mr Avery's submission that the FTTJ's references to missing documentary evidence suggest that the evidence was insufficient to demonstrate compliance with Regulation 15, but, in doing so, the FTTJ has fairly taken into account the issues raised in the reasons for refusal letter. Her finding that the appellant's husband had been exercising Treaty rights for five years was open to her on the evidence before her notwithstanding more documentary evidence might have been adduced than it was.
13. In summary, whilst the drafting of the decision is careless in parts, taking it as a whole it is clear that the FTTJ applied the terms of Regulation 15(1)(b) to the evidence and that, having assessed the evidence, she found it sufficient to demonstrate the appellant fulfilled the criteria in that regulation. That was an option open to her on the evidence. Her reasons are adequate and sustainable.

Decision

14. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
15. I do not set aside the decision.
16. No anonymity direction is made.

Signed **A M Black**

Deputy Upper Tribunal Judge A M Black

Date