Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34173/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 May 2015	**On 9 June 2015**

Before

LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE

and

Mr T B DAVEY, DEPUTY JUDGE OF THE UPPER TRIBUNAL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAOHAN CAI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms G Broclesby-Weller, Home Office Presenting Officer
For the Respondent: Mr N S Ahluwalia, Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of Immigration Judge Widdup in the First-tier Tribunal, who upheld an appeal by the appellant, Shaohan Cai, against a decision of the Immigration Officer at Heathrow.

2. The background is that the appellant is a citizen of China born on 28 November 1984. For the sake of consistency I shall refer to her as the appellant even though she is the respondent in this particular appeal. She married a Norwegian citizen, Mr Anders Vattekar, in London on 3 June 2010. It appears that in November 2010 the appellant was issued with an EEA family permit as his wife. She arrived in the UK on a flight from Rome on 30 August 2014 and was refused admission on the grounds that her husband was not currently in the UK and she therefore had no right of admission to the UK under Regulation 11 of the EEA Regulations. The basis for this is that her husband was working in Oslo where he was employed by Air France and that he had been there since September 2013. It is not necessary to go into all the other details of the background.

3. The First-tier Tribunal Judge heard evidence and made a number of findings. He found as a fact that the parties were resident in London in a flat in their joint names and that, although the husband had accommodation in Oslo, it was shared with others and was for convenience only while he worked and studied in Oslo. He found that his home was in London and that he retained that as a home by frequent visits and by having his wife and some of his possessions there. It is said in terms that he is a two homes man but his principal home was found to be in London. It was found as a fact that the husband was working in London for Air France UK until he relocated to Oslo and was exercising treaty rights at that time as a worker. The question which the judge indicated he had to address was whether Mr Vattekar continued to be exercising treaty rights while a student and worker in Norway.

4. The Regulations were referred to by Counsel. The Judge was also addressed and heard evidence about the financial situation of the parties. He found as a fact that the husband had sufficient resources of his own not to be a burden on the state and that in addition his financial commitments were shared with the appellant. Details of the financial situation are set out in the determination. It is not necessary for us to go into that for confidential reasons.

5. The judge accepted a submission that he should adopt a purposive approach to the EEA Regulations and should have regard to the general principle that the state should not impede the free movement of a worker. If the appeal was dismissed the appellant and her husband would have to reorganise their lives so that he returned to work in the UK and interrupted his studies or the appellant would have to give up her employment in order to follow her husband temporarily to Norway. He accepted the evidence of the husband, who is studying for a course in international law, that his long-term intention is to return to work and study in the UK. Given the evidence he heard about the husband's previous experiences in this country, given the judge accepted that he intended to remain in the UK, that he found that some of his possessions were here and that he only shared accommodation in Oslo, it seems to us that it cannot be said that

his coming to this country is only for visits of the kind which were in mind in the case of **O (Advocate General's opinion) [2013] EUECJ C-456/12 [2006]** and in particular those referred to in paragraph 59 of the court's judgment. We also bear in mind the Advocate General's opinion at paragraphs 97 to 111.

6. Broadly speaking, the question of whether the appellant's husband is resident in London is a matter of fact and on the evidence that was before the First-tier Tribunal his conclusion that Mr Vattekar does so reside was one which he was entitled to reach. That being so, he was also entitled to reach the conclusion that he was exercising treaty rights as a self-sufficient person. The question of money did not feature largely in the appeal before us although it did feature in the grounds of appeal. It does not appear to be disputed that if the appellant's husband is exercising treaty rights then the appellant herself is entitled to work in this country and her earnings can be taken into account. There is no suggestion that before us now the self-sufficiency question falls to be answered against the appellant or her husband. The only issue before us is whether the judge was entitled to find that the appellant's husband was resident and exercising treaty rights in this country. He answered that question in the affirmative and we cannot interfere with that answer. In these circumstances it is not necessary for us to go into detail about the other grounds of appeal which in a sense follow the question of residence. For these various reasons the appeal is dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

LORD MATTHEWS

Sitting as an Upper Tribunal Judge
(Immigration and Asylum Chamber)

No fee is paid or payable and therefore there can be no fee award.