



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

Appeal Number: OA/08881/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**On 1st June 2015 and Determined on the
papers**

On 12th August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**JUAN RAMON MOLA SOTO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Determined on the Papers

Representation: at the hearing of 1st June 2015

For the Appellant: Mrs Wiechers and Ms M Tyrrell

For the Respondent: Ms Fujiwala, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Venezuela born on 31st August 1948 and he applied for admission to the United Kingdom as a family member of an EEA national exercising treaty rights in the UK, namely his wife, (the sponsor). On 4th July 2014 the respondent refused the application with reference to Regulation 7 of the Immigration (European Economic Area)

Regulations 2006 (the EEA Regulations) as no passport or evidence of marriage was provided.

2. The appeal came before First-tier Tribunal Judge Sullivan, who allowed the appeal under the EEA Regulations.
3. An application for permission to appeal was made by the respondent on the basis that the decision was perverse if not irrational. An error of law was found in a decision promulgated on 1st June 2015 because of a contradiction within the findings. In order to remake the decision further evidence was requested and I directed that the matter be dealt with on the papers. I have received no objection from the appellant or respondent to the matter being determined on that basis.
4. Ms Fujiwala indicated at the hearing on 1st June 2015 that the following documentation would be required:
 - i) Further translated details of Mrs Wiechers de Mola's pension income from Venezuela.
 - ii) Comprehensive sickness insurance
 - iii) Evidence of the home ownership by the daughter, Maria Eugenia Wiechers, such as mortgage or Land Registry documents
 - iv) Income details for Maria Eugenia Wiechers such as payslips/P60/letter of contract from BG Group Ltd.
5. For the purposes of remaking the decision I accept that a marriage certificate was provided and that the appellant and Mrs Wiechers de Mola, who is a German and EEA national, are married. As Mrs Wiechers, the EEA national, had remained in the United Kingdom for more than three months I have applied Regulation 6 and considered whether she was exercising her treaty rights in accordance with the EEA Regulations in accordance with the EEA Regulations (Regulation 12). Although there is an initial right of residence under Regulation 13 this is for a period not exceeding 3 months. Following this period, an EEA national, that is the spouse, must show that she is a qualified person, thus a self-sufficient person in accordance with Regulations 4 and 6 of the EEA Regulations.
6. Regulation 6 specifies that a self sufficient person means a person who has
 - (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residenceand
 - (ii) comprehensive sickness insurance cover in the United Kingdom
7. Evidential requirements are not restricted by Section 85(5) of the Nationality, Immigration and Asylum Act 2002. Further to **Boodhoo and**

another (EEA Regs: relevant evidence) [2013] UKUT 00346
evidence which is post decision may be taken into account.

8. The documents requested by the Secretary of State were indeed produced by the appellant's sponsor wife. This included confirmation of her pension income, a further declaration of financial and accommodation support from Ms M Tyrrell, Mrs Wiechers', the EEA national and appellant's daughter, together with Ms Tyrrell's P60 confirming her income of [] per annum and confirmation of ownership by Ms M Tyrrell of property which housed the sponsor. Also produced was valid and current comprehensive sickness insurance for Mrs Wiechers, the sponsor.
9. I am satisfied under Regulations 6 and 7 of the EEA Regulations that the EEA national is indeed exercising treaty rights in the United Kingdom and that she is the appellant's wife and therefore the appellant is a family member. The appellant has satisfied the EEA Regulations such that he should be admitted to the United Kingdom.
10. The appellant's appeal is allowed outright.

Notice of Appeal

Appeal Allowed

Signed

Date 6th August 2015

Deputy Upper Tribunal Judge Rimington

Fee Award

In the light of the decision to re-make the decision in the appeal, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I make no award as although the appellant has been successful in his appeal the relevant paperwork was not produced until the hearing.