Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/03417/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 1 March 2016	**On 17 March 2016**

Before

Deputy Upper Tribunal Judge Pickup

Between

The Secretary of State for the Home Department

Appellant

And

Douglas Michael Grantham
[No anonymity direction made]

Claimant

Representation:

For the claimant: Mr P Bonavero, instructed by Gross & Co
For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Monaghan promulgated 13.8.15, allowing the claimant's appeal against the decision of the secretary of State, dated 7.1.15, to refuse his application made on 10.10.14 for a permanent EEA Residence Card as the family member of an EEA national exercising Treaty rights in the United Kingdom pursuant to the Immigration (EEA) Regulations 2006, as amended. The Judge heard the appeal on 31.7.15.

2. First-tier Tribunal Judge Nicholson granted permission to appeal on 31.12.15.

3. Thus the matter came before me on 1.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out below, I found no material error of law in the making of the decision of the First-tier Tribunal sufficient to require the decision of Judge Monaghan to be set aside. Having announced my decision at the hearing, I reserved my reasons, which I now give.

5. The relevant background can be summarised briefly as follows. The claimant, a citizen of South Africa, is the husband of Karolina Grantham, a German national. They live in the UK with their two children, born in South Africa, but of German nationality. Mr Grantham entered the UK in 2008 and made application for a residence card as confirmation of a right to reside in the UK as the family member of an EEA national exercising Treaty rights in the UK, on the basis of her self-sufficiency and his employment with a bank in the UK. He was granted a residence card, which expired on 13.10.14. Shortly prior to that date, he made the application for a permanent residence card on the basis of a period of 5 years' continuous residence, pursuant to regulation 15(1)(b), the refusal of which was the subject of the appeal to the First-tier Tribunal.

6. The reasons for refusal letter, dated 7.1.15, noted that the application relied on the employment and self-sufficiency of the EEA sponsoring wife. The Secretary of State considered that as the only income going into the submitted joint bank statements came from the claimant's employment with Investec Bank, the sponsor could not meet the self-sufficient requirement, stating, "In order to be self-sufficient an EEA national cannot rely on income generated from their partner, whose ability to work is dependant upon them exercising Treaty rights. The letter relied on AG & Others (Germany) [2007] UKAIT 00075 (IAC). Thus the Secretary of State concluded that the sponsor was not self-sufficient in the period between 7.9.08 and 5.11.12, at which point she became employed and was able to qualify as a worker exercising Treaty Rights.

7. At the First-tier Tribunal appeal hearing (at which the Secretary of State was not represented) the judge's attention was drawn by Mr Bonavero, acting then and today on behalf of the claimant, to subsequence case authority before the ECJ, including Alopha v Ministre du Travail de l'Emploie et de l'Immigration (Citizenship of the Union) Case C-86/12, and Kuldip Singh and others v Minister for Justice and Equality Case C-218/15. The first, which the judge distinguished from the circumstances of this claimant, was to the effect that under Directive 2004/38 it is sufficient that such resources are available to the Union citizen and lays no requirement whatsoever as to their origin and could be provided by a national of a non-member state. However, the judge was persuaded by the judgement of the court in Kuldip Singh, which was asked whether the requirement of self-sufficiency must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members even where those resources derive in part from those of the spouse who is a third-country national. The answer of the court at §75 of the decision, was that to interpret the requirement as meaning that the person claiming self-sufficiency must have such resources himself, without being able to use for that purpose the resources of an accompanying family member, would add "a

requirement to the origin of the resources which, not being necessary for the attainment of the objective pursued, namely the protection of the public finances of the Member States, would constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement and residence guaranteed by Article 21 TFEU."

8. At §76 the Court continued, "It follows that the fact that some part of the resources available to the Union citizen derives from resources obtained by the spouse who is a third-country national from his activity in the host Member State does not preclude the condition concerning the sufficiency of resources in Article 7(1)(b) of Directive 2004/38 from being regarded as satisfied."

9. Mr Tufan sought to distinguish the present case from those authorities by suggesting that whilst a part of the resources can come from the third-country spouse, they cannot be the sole source of the resources, as the EEA national spouse has to be exercising Treaty rights in the UK on her own account. However, as I read the decision in Kuldip Singh, no such interpretation is possible. Neither the Directive nor the decision makes such a distinction. The reference to resources deriving in part arose from the particular circumstances of that case and the question asked. The Court was not laying down a requirement that only a part of those resources could come from the third-country national spouse.

10. Neither do I accept the argument in the grounds of application for permission to appeal that Regulation 4(4) supports the interpretation contended for by the Secretary of State when defining a self-sufficient person the regulation states, "the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient." That does not import a requirement that the resources cannot be entirely those of the third-country citizen spouse. As the objective pursued is to protect the public finances of the Member State, a moment's thought would lead to the conclusion that such a requirement cannot be proportionate, since if between them they have sufficient resources so as not be a burden on the financial resources of the host Member State, there will be no such burden and thus no need for such a condition. Further, to import a requirement that only part of the resources may come from the third-country national spouse begs the questions of what proportion their respective parts must be? Would £1 income of the sponsoring EEA national spouse be enough? The proposition is fraught with difficulties not provided for in any regulation or guidance and flies in the face of common sense.

11. In the circumstances, I am entirely satisfied that the First-tier Tribunal Judge correctly applied the law to the facts of the case and reached the reasoned conclusion that the claimant is entitled to the permanent residence card sought.

Conclusions:

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a whole fee award.

Reasons: The appeal was correctly allowed at the First-tier Tribunal and the appeal of the Secretary of State to the Upper Tribunal has been dismissed.

Signed

Deputy Upper Tribunal Judge Pickup