



IAC-FH-AR-V1

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

Appeal Number: IA/18991/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> December 2015

Decision & Reasons Promulgated  
On 6<sup>th</sup> January 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FLORENCE RANJITHAMANY ANTHONY PILLAI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kotas, Home Office Presenting Officer  
For the Respondent: Mr R Solomon, Counsel, instructed by AP Solicitors

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State I refer to the parties as they were before the First-tier Tribunal.
2. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 11<sup>th</sup> April 2014 refusing to issue her a residence card as confirmation of her right to reside in the United Kingdom under the Immigration (EEA) Regulations 2006 (hereinafter the EEA Regulations). First-tier

Tribunal Judge Moore allowed the appeal. The Secretary of State now appeals with permission to this Tribunal.

### **Background**

3. The background to this case is that the Appellant applied for a residence card as the mother-in-law of an Italian national exercising treaty rights in the UK. The Secretary of State refused the application having considered it under Regulation 8(2) of the EEA Regulations as an application for a residence card as an extended family member of an EEA national under Regulation 8(1). The Secretary of State noted  

“While you have provided evidence of being an extended family to your EEA Sponsor through birth certificates and marriage certificates [sic]. You have not provided this department with any valid evidence that you are currently resided with your EEA national in the United Kingdom [sic].”
4. The Secretary of State accepted that the Appellant is related to the EEA national as claimed but refused to issue the residence card not being satisfied that the Appellant had shown that she was residing with the EEA national upon entry to the UK and that she is currently still residing with the EEA national.
5. In considering this appeal the First-tier Tribunal Judge heard evidence from the Appellant and her daughter-in-law. The oral evidence was that the Appellant's daughter-in-law was an Italian national who married the Appellant's son on 10<sup>th</sup> August 2005 and they have two children from that marriage. Since September 2013 the Appellant was living with the EEA national and her husband and their two children. The Italian national and her husband had been providing the Appellant with accommodation and financial assistance at their home. The oral evidence from the Italian national is that she was employed in exercising treaty rights in the UK and this was evidenced by payslips and bank statements from Slough Borough Council.
6. The judge found that he was satisfied that the Appellant provided credible and reliable evidence in demonstrating that she currently resided with the sponsor and her son and family in the UK. The judge took account of evidence from the Appellant's GP and from the NHS and was satisfied on the basis of all of the evidence that the Appellant lives with her son and his EEA national spouse. The judge noted that whilst the issue of dependancy was not raised in the refusal letter he was nevertheless satisfied that the Appellant is dependant on her son and the EEA national and their family in the UK and has lived with them for almost two years. He was satisfied that she has no income and relies on them for accommodation and financial assistance. The judge concluded that the Appellant meets the requirements of Regulation 8(1)(2) of the EEA Regulations.
7. The Secretary of State sought permission to appeal on the grounds that the judge erred in law by allowing the appeal outright when the Secretary of State had not considered Regulation 17(4) which provides for the exercise of discretion in issuing residence cards to extended family members.

**Error of Law**

8. I firstly note that the grant of permission to appeal dated 10<sup>th</sup> August 2015 states that there is an arguable error of law in relation to the approach taken by the judge as to whether this was a marriage of convenience. This appears to have no relevance to this particular case and may have been issued in error. In any event, I am satisfied that there is an arguable error of law in this case and that, although the reasons for granting permission appear to not relate to the Grounds of Appeal, in fact permission would have been granted in any event on the basis of the Grounds.
9. In his Rule 24 response and at the hearing Mr Solomon submitted that, having accepted that the Appellant is a dependant direct relative of an EEA national, the judge ought to have considered the appeal in accordance with Regulation 7(1)(c) of the EEA Regulations rather than under Regulation 8.
10. Regulation 7(1)(c) provides as follows:

“7(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as family members of another person  
-  
...  
(c) dependant direct relatives in his ascending line or that of his spouse or his civil partner;  
...”
11. Regulation 17 (1) provides as follows:

“17(1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a permanent right of residence under Regulation 15 on application and production of -  
(a) a valid passport, and  
(b) proof that the applicant is such a family member”
12. It is clear on the basis of the documents before me that the Appellant made an application for a residence card as a family member. According to the Reasons for Refusal letter the Secretary of State considered that as an application as an extended family member. However this was erroneous and the application should have been considered under Regulation 7 not Regulation 8. The judge continued this error in finding that the Appellant meets the requirements of Regulation 8. The judge further erred at paragraph 18 in saying that he allowed the appeal under the Immigration Rules. There was no appeal before him under the Immigration Rules.
13. However I am satisfied that these were not material errors because the judge made all relevant and appropriate findings and simply misapplied the relevant provisions of the EEA Regulations. The judge’s findings are sufficient to have justified a conclusion that the Appellant meets the requirements of Regulation 7 and the judge

erred in considering Regulation 8 instead of Regulation 7. It is clear from the judge's findings, and conceded by the Secretary of State in the Reasons for Refusal letter, that the Appellant is the direct relative in the ascending line of the EEA national's spouse. The judge found that the Appellant is dependant on the EEA national and her spouse. In these circumstances the Appellant meets the requirements of Regulation 7 (1) (c) and is entitled to a residence card under Regulation 17(1). This does not require the exercise of discretion by the Secretary of State. In these circumstances the correct outcome is that the appeal should be allowed under Regulation 7 of the EEA Regulations and the Appellant is entitled to a residence card under Regulation 17(1) of the EEA Regulations.

**Notice of Decision**

14. The decision of the First-tier Tribunal Judge discloses no material error of law. The decision of the First-tier Tribunal shall stand.
15. No anonymity direction is made.

Signed

Date: 5<sup>th</sup> January 2016

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I maintain the fee award made by the First-tier Tribunal for a whole fee award of £140.

Signed

Date: 5<sup>th</sup> January 2016

Deputy Upper Tribunal Judge Grimes