



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04147/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19 April 2018

Decision and Reasons Promulgated
On 04 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I.A. M. MURRAY

Between

MRS WANJIN YANG
(ANONYMITY HAS NOT BEEN DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Krushner, Counsel
For the Respondent: Mr Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the People's Republic of China born on 27 September 1980. She appealed against the respondent's decision of 19 March 2016 refusing to issue her with a residence card as a family member of an EEA national exercising Treaty Rights in the UK. Her appeal was heard by Judge of the First-Tier Tribunal Nicholls on 1 September 2017. Her appeal was dismissed under the Immigration (European Economic Area) Regulations 2006.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Birrell on 4 March 2018. The permission refers to the grounds which assert that the Judge erred in that he was mistaken in his understanding of Regulations 17 and 29A of the 2006 Regulations and failed to take into account the decision of *Barnett v SSHD* [2012] UKUT 142 relating to "passport

required” in Regulation 17(a) and the proof of relationship and that the Judge’s assessment of Regulation 29A was perverse as the appellant and sponsor both gave good evidence as to why the production of the passport was beyond the appellant’s control in the circumstances. The grounds go on to state that the Judge failed to take into account that the refusal letter made no reference to Regulation 29A and state that the Judge failed to assess the evidence at the date of the decision which is the material date.

3. There is no Rule 24 response.

The Hearing

4. The reason that the residence card was not issued to the appellant is that the sponsor did not produce his current original passport with the appellant’s application. The appellant was issued with an EEA family permit when she moved to live with the sponsor in the United Kingdom on 30 June 2015. What the sponsor produced with the application was a certified copy of his current passport and a letter explaining that the sponsor has an international job and he requires his passport with him all the time. His previous passport was also enclosed in its original form. The explanation given with the application was that the sponsor travels all over the world on business as an export sales manager and it is essential that he remains in possession of his passport in order to effectively carry out the role of his job.
5. The Presenting Officer submitted that it is not clear why the First-Tier Tribunal Judge did not accept this at the First-Tier Hearing.
6. Regulation 29A of the EEA Regulations 2006 provides a discretion for the Secretary of State to accept alternative evidence “where the person is unable to obtain or produce the required document due to circumstances beyond his or her control”. The First-Tier Judge was aware of this, it is referred to in paragraph 13 of the decision.
7. Counsel submitted that when the previous residence permit was issued the sponsor’s original passport was seen and accepted as genuine. I was referred to paragraph 13 of the decision and Counsel submitted that there are no credibility findings and there is evidence of the sponsor’s constant travel with his work. He submitted that for the Judge to dismiss the appeal must be an error of law especially when the said case of ***Barnett*** is considered. He submitted that the passport referred to in Regulation 17A of the EEA Regulations is that of the appellant. The proof of relationship to the EEA citizen may result in a requirement to produce the sponsor’s EEA passport. The Tribunal in ***Barnett*** found that it is unlawful for the respondent only to refuse to issue a permit because of the absence of the sponsor’s passport and the Tribunal further found that the burden is on the respondent to show why this passport was required in all the circumstances. The appellant’s passport was submitted. In the grounds of application it is stated by the Judge that the respondent acted lawfully in refusing the application with no explanation as to why the passport was required. He failed to consider the fact that the respondent did not ever explain why the Dutch passport was required as the appellant entered the United Kingdom to join this same sponsor and

was granted a permit without the need for an appeal using the same expired Dutch passport which was sent to the Home Office with this application. I was asked to note that Regulation 29A is not mentioned in the refusal letter. The Judge states that the Home Office's decision was not in accordance with the spirit of Regulation 29A.

8. Counsel submitted that there is country guidance case law which supports the application and I was asked to re-make the decision in the appellant's favour.

Decision and Reasons

9. The First-Tier Tribunal Judge did not follow the said case of *Barnett*. That case found that it was unlawful for the respondent only to refuse to issue a permit because of the absence of the sponsor's passport. The burden was on the respondent to show why the passport was required in all the circumstances. The sponsor actually produced his original passport at the First-Tier hearing. The appellant's passport was produced along with the sponsor's old passport, a certified copy of his current passport and a letter from his employers explaining why the sponsor requires to hang on to his current passport because of his job. I see no reason why the respondent required the production of a further valid passport for the sponsor when the respondent had granted the appellant a permit in 2015 based on the sponsor's Dutch passport at that time. This passport is no longer up to date but the original out of date passport was produced with this new application with a certified copy of the new passport. There is evidence that if the sponsor is not available for travel with his work he could well lose his job. Statements confirming this were with the sponsor and also before the First-Tier Judge. The First-Tier Judge saw the sponsor's original passport at the appeal hearing. He should have allowed the appeal.
10. There is a material error of law in the First-Tier Judge's decision and I am setting his decision aside.

Notice of Decision

I find that there is a material error of law in the decision of First-Tier Tribunal Judge Nicholls promulgated on 8 September 2017 and I am setting that decision aside.

I make the decision in this appeal in the appellant's favour. I allow the appeal.

Anonymity has not been directed.

Signed

Date 29 May 2018

Deputy Upper Tribunal Judge I.A.M. Murray