



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

Appeal Number: EA/07417/2016

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 31 October 2018

**Decision & Reasons
Promulgated**

On 17 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MRS SAROJ KUMARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khurram, Solicitor of Khurram & Co Solicitors

For the Respondent: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, date of birth 21 July 1952, appealed against the Respondent's decision of 18 May 2016 to refuse a residence card. The appeal against that decision came before First-tier Tribunal Judge P J Holmes (the Judge) who on 12 September 2017 dismissed the appeal under the 2006 Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).

2. The position was that the Appellant and her Sponsor son had made plans to go to work in the Republic of Ireland. It was intended that the family would remove to the Republic of Ireland. At the outset it is clear that the intended removal of the family had commenced but ultimately the position was that the children of the family did not take up, despite it being planned, life in Ireland. Nor it seems did the Sponsor's wife take up employment in Ireland. The Sponsor took the view or through the family took the view that the Appellant did not enjoy or wish to make a life in the Republic. The question therefore arose whether or not there was the entitlement to a residence card either by reference to the 2006 Regulations or as they should be understood in the light of the case of O and B v the Netherlands EUEJC C-456/12. The arguments largely centred on whether or not the exercise that had been intended and partly undertaken, because it was accepted that the periods of time had been sufficient to establish an entitlement to the residence card under the provisions of the Regulations.

3. Mr Khurram who appeared before the Judge has provided a skeleton argument essentially presenting his case and arguing that the Judge's real error when he did not make any adverse findings on credibility, or criticise the generality of the evidence given for the purposes of resolving the issues in the appeal, had failed to concentrate on the correct issue, had become fixed upon the issue of whether or not the issue of permanent residence or principal residence had been decided correctly and failed in the light of that issue to properly assess in the round, as O and B indicated, the evidence that needed to be interpreted to decide whether or not the issue of transference of the parties' lives to another EEA state had actually occurred.

4. The Judge concluded at paragraph 25 of the decision:

“I have considered what ‘the centre of P’s life’ might be for a worker who is also a family man. I consider that the essential features of such a person’s life would naturally include his family, his work and his home. I take into account that the Sponsor was a worker in Ireland continuously for just over five months and also the fact that he gave up employment with McDonald’s in mid-July 2015 which is before he became aware of an issue concerning his mother; and that his employment with HCL was a contract for a six month fixed term that was due to expire in November 2015. I take into account that when he went to Ireland, his family remained behind in the family home which as far as I am informed they still to this day occupy, while he rented a furnished flat in Dublin. I find that that flat never became the Sponsor’s principal residence. The children never went to school in Dublin, and there is no evidence that the Sponsor’s wife ever took up the employment there, that she had made enquiries about. Upon the evidence before me I am not satisfied on a balance of probabilities that the conditions stated in Regulation 9(2)(c) (of the 2006 Regulations) was ever met.”

5. For these reasons he continued at paragraph 26:

“As at the date of appeal I am not satisfied that the Sponsor is a qualified person for the purposes of the 2006 Regulations. Consequently the Appellant has not shown that she is entitled to the issue of a residence card under Regulation 17.”

6. Having considered carefully Mr Khurram’s argument it seemed to me that the Judge had plainly got the right Regulation in mind, applied it in the light of the evidence which he heard, assessed and reached the view that he did. On the face of it I might not have reached the same view but that is not a basis to interfere with this decision. It is only if there is a demonstrable error of law. It did not seem to me that there was such an error which made any material difference to the outcome. I conclude,

whilst another Tribunal might well have reached a different decision that does not demonstrate an error of law. I concluded that the Judge did what was required of him and therefore it would be inappropriate to interfere with that decision.

DECISION

7. The appeal is dismissed. The Original Tribunal's decision stands.

ANONYMITY

No anonymity direction was previously made.

Signed

Date 7 December 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

No fee award is appropriate.

Signed

Date 7 December 2008

Deputy Upper Tribunal Judge Davey

P.S. The promulgation of this decision has been delayed because the case file was miss-located.