



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/12760/2016**

Appeal Number:

EA/13107/2016

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 9 March 2018

Promulgated

On 14 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

(1) AB

(2) RSV

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Zafar, Legal Representative, of Zafar Law Chambers

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

REMITTAL AND REASONS

Anonymity

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellants. Breach of this order can be punished as a contempt of court. I make this order because the Second Appellant is a minor.

Introduction

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Deni Mathews (hereafter “the judge”), promulgated on 14 November 2017, dismissing their appeals. The appeal to the First-tier Tribunal had been against a refusal by the Respondent to recognise the Appellants entitlement to permanent residence based on their retained rights of residence contrary to regulation 10 and 15 of the Immigration (European Economic Area) Regulations 2006 (hereafter “the EEA Regulations”).
3. On appeal, the judge concluded that the Appellants could not meet the requirements of the EEA Regulations as he was not satisfied that the documentation bearing two different names asserted to prove that the former EEA national spouse was exercising treaty rights at the relevant time related to the same person. That, the judge concluded was fatal to the appeal.
4. The error that secured the Appellants permission to appeal was the impermissible approach adopted by the judge in consequence of his reliance on the aforesaid, an issue neither raised by the Respondent in the refusal or at the hearing.
5. The Respondent does not oppose the appeal and both parties agree that the decision of the First-tier Tribunal cannot stand. I agree with the position adopted by the parties. It is plain that the judge’s approach was procedurally improper resulting in unfairness to the Appellants.
6. In consequence, as invited to do so by the parties, the appropriate course is to remit the matter to the First-tier Tribunal for a complete rehearing on all issues.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal for a rehearing of the appeal by a judge other than Judge D Mathews.

Signed

Date 9 March 2017

Deputy Upper Tribunal Judge Bagral