



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

Appeal Number: EA/01151/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2018**

**Decision & Reasons
Promulgated
On 25 January 2019**

Before

**UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE JACKSON**

Between

**MUJIBULLAH OMARZAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Mardner, Counsel instructed by Nasim & Co Solicitors
For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan born on 23 October 1982. He originally appealed against the respondent's decision dated 11 January 2018 in which the respondent refused to issue him with a residence card as the direct family member of a British citizen who has previously exercised treaty rights in Ireland.
2. Originally the refusal by the respondent was on the basis that there was insufficient evidence of the family member being a worker and exercising treaty rights in Ireland or having genuine residence there. It was noted

that there had been a recent refusal of entry clearance into the United Kingdom.

3. On 27 September 2018, First-tier Tribunal Judge Mace dismissed the appeal. Although it was accepted that the couple had lived together in Ireland, the sponsor, the wife, had only worked for a period between the end of January and the end of March and not the ten-month period as had originally been claimed. The sponsor had also returned to the same job in the United Kingdom and there were no credible reasons for moving to Ireland. Again, it was noted that there was a previous entry clearance refusal. There was also a finding by the First-tier Tribunal that the purpose of the residence in Ireland was as a means of circumventing immigration laws applying to non-EEA nationals which they would otherwise be subject to.
4. The appellant duly applied for permission to appeal which was granted on the papers by First-tier Tribunal Judge Grant-Hutchison on 26 October 2018. The appeal comes before us today essentially on a single ground which is that although the First-tier Tribunal did not accept that the sponsor had worked in Ireland for a period of ten months, it was accepted that she had worked in Ireland. Reliance was placed on the case of O and B v Minister voor Immigratie, Intergratie en Asiel [2014] QB 1163 to the effect that three months' residence as a worker, self-employed person, self-sufficient person or student is required and no longer period is necessary to show genuine residence or effective residence and exercise of treaty rights.
5. The difficulty for the appellant which is apparent before us today, is that on the facts, even if that submission is right in law, the appellant does not meet it. Although there is no express finding precisely on the dates of employment, it is clear from paragraphs 24, 26 and 27 of the First-tier Tribunal decision that a much shorter period of employment than was claimed by the sponsor was in fact the case. The closest the finding of fact gets is that there was documentary evidence of employment between the end of January and the end of March 2016. The payslips before the First-tier Tribunal were dated within that period from 14 January to 24 March 2016. That is a period short of three months. For that reason, even if the legal submission on the basis of O and B is correct, the appellant falls short of it on the facts and the appeal must therefore fail.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.



Signed
December 2018

Date 17th

Upper Tribunal Judge Jackson