Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** EA/02220/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 1 March 2019

Decision & Reasons Promulgated
On 7 March 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A [O]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 28 June 1988. Her husband, [WM], is a citizen of the UK, born on 11 September 1982. They married on 18 May 2013. They have a son, born on 31 May 2014, also a UK citizen.

2. From November 2015 until June 2016 the appellant and her husband lived and worked in Ireland. They returned to the UK towards the end of that month.

3. The Brexit referendum took place on 23 June 2016.

4. On 29 June 2016, the appellant applied for a residence card in terms of the Immigration (EEA) Regulations 2016.

5. The respondent refused that application by a letter dated 14 February 2017. At page 2 of 5, the respondent said, "… it is not accepted that you and your … sponsor's residence in the EEA host country was genuine and it is considered that the purpose … was as a means of circumventing the UK's domestic immigration rules or other immigration law."

6. FtT Judge David C Clapham SSC dismissed the appellant's appeal by a decision promulgated on 20 June 2018. He thought that it would have been irrational for the appellant and sponsor to panic over the impact the referendum result might have on their status, and so did not accept their evidence about the reasons why they gave up their jobs in Ireland and returned to the UK. He concluded that the family had not moved the centre of its life to Ireland, and that if they had, they would have stayed there, hoping for a favourable ["remain"] referendum outcome, and in the event of an unfavourable ["leave"] outcome, would have waited to see "what the position was going to be" for UK citizens, and their non-British dependents, living and working in Ireland.

7. UT Judge Kebede granted permission to appeal to the UT on 7 November 2018, on the view that the judge arguably focused on one aspect of the appellant's circumstances, without regard to relevant considerations set out in the grounds, and arguably failed to make a rounded assessment.

8. The other considerations mentioned in the grounds are that in Ireland the appellant and sponsor had jobs with good salaries and prospects, rented their own flat, bought a car, had their son in nursery, and joined the local church; they had no home or jobs to which to return in the UK; and these were factors relevant in terms of the respondent's guidance.

9. One error of fact emerged during submissions. The evidence in the FtT was that the appellant and sponsor decided to move once the referendum result was known. The judge was wrong to think that the decision was made in advance of the result (apparently as a result of the line taken by the presenting officer in the FtT). This is not crucial, but it had some bearing on the outcome.

10. It would have been irrational for the appellant and sponsor to react to the referendum result as they claimed they did. The judge's analysis of that issue is correct. However, does that justify the conclusion that they never genuinely moved the centre of their lives to Ireland? All the other indications in the evidence are that they had.

11. People do fail to take professional advice when it would be very much in their interests to do so, and they do make irrational spontaneous decisions. If it is not accepted that the appellant and sponsor made a silly choice, what would that reveal? It appears even more far-fetched that they took the referendum as a convenient pretext to "cash in" on a false

impression they had set up of moving to Ireland, using panic as an explanation, knowing it had never been well-founded, but expecting the respondent, or a tribunal, to fall for the ruse.

12. I am persuaded by the grounds and submissions that the judge did not take account of all material considerations, and did not give adequate reasons for the conclusion reached.

13. In remaking the decision, I find it more likely than not that the appellant and sponsor did panic over the referendum result, and more likely than not that between November 2015 and June 2016 they had genuinely moved their centre of life to Ireland.

14. The decision of the FtT is set aside. The appeal, as originally brought to the FtT, is allowed.

15. No anonymity direction has been requested or made.

5 March 2019
UT Judge Macleman