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

**Appeal Number:** EA/02834/2017, EA/02840/2017, EA/02843/2017, EA/02849/2017 & EA/02851/2017

**THE IMMIGRATION ACTS**

| **Heard at Birmingham Civil Justice Centre** | **Decision and Reasons Promulgated** |
|---|---|
| **On 28 May 2019** | **On 08 July 2019** |

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

| | |
|---|---|
| **LILOMA SULEIMANKHAIL** | First Appellant |
| **SHAFIULLAH SULEIMANKHAIL** | Second Appellant |
| **RAHMATULLAH SULEIMANKHAIL** | Third Appellant |
| **ZABIULLAH SULEIMANKHAIL** | Fourth Appellant |
| **ABDULLAH SULEIMANKHAIL** | Fifth Appellant |

(anonymity order not made)

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr I Ahmed, Counsel instructed by AUUA Law Solicitors
For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by five members of the same family against a decision of the First-tier Tribunal dismissing their appeals against a decision of the Respondent on 24 February 2017 refusing them Residence Cards as confirmation of their right to reside in the United Kingdom as the family members of a person who was previously working in another Member State.
2. The First Appellant is the mother of the other appellants, all sons, who were born in 1998, 2000, 1996 and 1994 respectively.
3. It is a feature of United Kingdom immigration control that the family members of EEA nationals exercising treaty rights in the United Kingdom are subject to less arduous restrictions on their admission to the United Kingdom than are the family members of British citizens. Where a British citizens has enjoyed family life whilst exercising treaty rights he (in his case) can, in the event of his return to the United Kingdom, be treated as if he was an EEA national so the family members may join him in the United Kingdom by satisfying the requirements of the Immigration (European Economic Area) Regulations 2016. Each of these Appellants applied under the Regulations for a Residence Card but their applications were unsuccessful.
4. There were two main reasons for the applications being refused.
5. First, where an application depends on a British citizen being treated as an EEA national, it has to be shown that he would be a "qualified person" if he were an EEA national. In this case this means that the British citizen must be working but the Respondent was not satisfied that the British citizen was working because he claimed to be paid in cash so there were no bank records to prove that his employers paid a wage regularly, and there was an obvious spelling mistake in the title of the business in what purported to be a supporting letter from the alleged employer. This point was not resolved by the First-tier Tribunal because the judge had unequivocally decided the second point in the Respondent's favour.
6. Second, the residence in the EEA state must be "genuine" in the sense that the centre of the British citizen's life had transferred to the EEA state. Residence in the EEA state is not "genuine" if it was for the purpose of circumventing immigration control. The Respondent was not satisfied that the centre of the British citizen's life had transferred to the EEA state, mainly because the length of residence was short and the evidence of integration was skimpy.
7. The First-tier Tribunal essentially agreed independently with the Respondent's approach and conclusions.
8. I consider below the grounds of appeal but permission to appeal to the Upper Tribunal was given by Upper Tribunal Judge Coker because:

> "It is arguable that the First-tier Tribunal Judge failed to take into consideration the fact of having been granted EEA residence permits in Ireland when considering the length of time there and the work undertaken and involvement in Ireland given the age of the children."

9. The Respondent accepted that the Appellants lived in Ireland as a family from 4 November 2014 until 19 May 2016. It follows that the stay lasted for about 18

months. At the start of the residence the Second Appellant was aged 16 years and the Third Appellant was aged 14 years. The other Appellants were adults.

10. It is a matter of record that the First Appellant gave birth to a daughter on 2 January 2016. She is an Irish citizen.

11. The First-tier Tribunal Judge summarized the law. In particular he distilled the ratio of O and B v The Netherlands C-456/12t as "there is no specific test laid down and no requirement [in jurisprudence or the Directive] that the centre of life has shifted, the test is whether family life has been created or strengthened in the host state. He then quoted extensively from a decision of the Court of Session in AA v SSHD [2017] CSIH 38 stating that the Upper Tribunal was

> "required to carry out a qualitative assessment of the evidence bearing on the residence in Germany of the appellant and his wife to determine whether it constituted genuine residence for the purpose of the regulation".

12. The Judge noted evidence that the minor appellants attended school and had registered with the library in Limerick but found no evidence of participation in events outside the family. It was the Appellants' case that they could not integrate because the host community was not familiar with Afghan culture.

13. The Judge acknowledged that there was evidence that the Appellants lived in Ireland but concluded at paragraph 31 "Taken overall the evidence does not show that the family were centred in Ireland with a genuine intention to settle there". He found that the appellants had not shown that the met the requirements of Regulation and he dismissed the appeals.

14. There were five grounds of appeal to the Upper Tribunal. The observations I make on the grounds reflect the submissions of the parties before me.

15. Ground 1 complained of a "Failure to consider evidence of daughter born in Ireland (family ties created and strengthened)".

16. There is nothing in this point. The Judge was clearly aware that a child had been born in Ireland. The Judge refers at paragraph 28 to the Appellant and Sponsor "having a daughter" but there does not appear to have been much evidence of the daughter's birth being a means of integration into the community. There is not, for example, anything in the First Appellant's witness statement suggesting, for example, attendance at pre-natal classes or mother and baby groups, or any thing else that might be seen as a way of the First Appellant and her baby establishing themselves in Ireland rather than simply addressing their immediate health needs.

17. I do not agree that obtaining an Irish passport is evidence of an intention to remain in Ireland as alleged in the grounds. Indeed, strictly it might be thought of as evidence of an intention to leave Ireland, if only temporarily. Less flippantly there are many reasons for obtaining proof of nationality. It is not compelling evidence of a person's reasons for residing in a particular country, still less the reason for her parents residing there.

18. Ground 2 complains of a "Failure to consider evidence (Granting of EEA family permits on 2 occasions"). I see nothing in this point. Entry clearance was needed for the Appellants to travel to the United Kingdom. That they were

found to satisfy the requirements for entry clearance does not illuminate a later decision made when they clearly do not want to return to Ireland.

19. Ground 3 complains of a "Failure to consider the documentary evidence". Particular reference is made to a failure to consider (specifically) at letter from the Century Snooker Club in Limerick. This identifies three of the Appellants as "patrons of the snooker club". It does not explain what that involves and, perhaps still more tellingly, neither did the statements. There is nothing to show that this is a material error.

20. Ground 4 complains of a "Failure to consider the oral evidence in the determination – finding as to employment".

21. The Judge explained that he did not need to make a finding on the Sponsor's employment because he had decided to dismiss the appeals on other grounds. It would have been better if the Judge had made findings on this point. There is invariably a risk that the other findings might not be sound but the omission is not, of itself, a material error of law and, arguably, could only advantage the Appellants. A favourable finding on this point would not have helped them and an unfavourable finding on slender evidence could have created a further hurdle for them.

22. It is unfair to criticise the Judge for finding that there was no explanation for the name of the employing business being misspelled and, allegedly contradictorily, finding that there was oral evidence for the deficiency, namely an alleged typing error. That is an odd explanation because the spelling mistake was in the letter head but, in any event, it was plain on fair reading of paragraphs 13 and 31 that the "absence of evidence by way of explanation" that troubled the judge was not absence of *any* explanation but the absence of the promised letter from the employer confirming the error.

23. Ground 5 complains of a "Failing to make a finding on an issue pertinent to the appeal" but the issue was not pertinent to the appeal. It was dismissed for quite separate reasons.

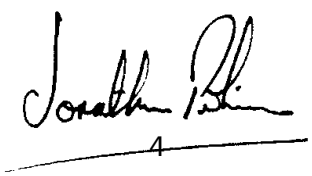
24. Before me Mr Ahmed emphasised that there was 18 months residence in Ireland. It was dominated for the First Appellant by a difficult pregnancy. There was undisputed evidence that the minor appellants went to school and the documentary evidence showed involvement in society.

25. None of this meets the Judge's observation at paragraph 29 that it "does not seem to have taken much for the family to move from Ireland".

26. Appeals such as this rarely turn on a "killer point" but on an evaluation of the evidence as a whole. There is no doubt that the Appellants lived lawfully in Ireland for about 18 months. With the help of the representatives I have gone through the First-tier Tribunal's decision carefully. I am satisfied that the Judge directed himself correctly in law and reached a permissible decision on the evidence.

**Notice of Decision**

27. The appeal of each Appellant is dismissed.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 4 July 2019