



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/07041/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 28 October 2019

**Decision & Reasons
Promulgated
On 26 November 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**NYIMA SANYANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Gambia and was born on 19 March 1979. She first entered the United Kingdom as a student in January 2010. She married a Spanish citizen, Mr Sanyang (the sponsor), in November 2009. By a decision dated 4 May 2016, the Secretary of State refused the appellant's application for a residence card as the family member of an EEA national exercising Treaty Rights in the United Kingdom. The appellant appealed to the First-tier Tribunal which dismissed her appeal. Following a successful appeal to the Upper Tribunal, the appeal was returned to the First-tier Tribunal which, in a decision promulgated on an 11 June 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Mr Diwnycz, who appeared for the Secretary of State before the Upper Tribunal, did not seek to oppose the appeal. I shall therefore be brief. The First-tier Tribunal at [45] found that the sponsor or was only working for six hours per week. He found that this period of work was too short to amount to the exercise of Treaty Rights as a worker. The appellant now relies upon *Genc v Land Berlin* (Case: 14/09) in which it was established that as little as five hours per week at a very low hourly wage might amount to work for the purposes of the exercise of Treaty Rights. Moreover, the judge found that the sponsor's work appeared to be 'ancillary.' I accept the appellant's submission that the determination of the possible ancillary nature of work depends, at least in part, upon an examination of an individual's employment history. No such examination is carried out in this instance. I accept also the submission that, in the absence of other evidence, there was no reason to doubt the appellant's assertion that the sponsor had returned to work following cancer treatment because he needed to earn money in order to support himself. His motivation was, therefore, not seriously in doubt.
3. With the agreement of both representatives, I set aside the First-tier Tribunal decision. I was informed that the appellant is critically ill and, in the circumstances, I have proceeded to remake the decision. The appellant's appeal against the decision of the Secretary of State dated 4 May 2016 is allowed.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 4 May 2016 is allowed.

Signed

Date 2 November 2019

Upper Tribunal Judge Lane