



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

Appeal Number: IA/29218/2012

THE IMMIGRATION ACTS

**Determined at Field House without a Determination
hearing Promulgated
On 30 May 2013 On 7 June 2013**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MANZRUA HUJANOVA
(NO ANONYMITY ORDER MADE)**

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal Judge Blair promulgated on 25 February 2013 dismissing her appeal against the decision of the respondent made on 7 December 2012 to refuse to issue her with a residence card as confirmation of her right of residence as the spouse of an EEA national exercising treaty rights here.

2. The respondent refused the application on the basis that she was not satisfied that the appellant's husband was, as claimed, self employed. The appellant appealed against that decision, adducing additional material and after an oral hearing on 15 February 2013, the judge, although satisfied [9] that since August 2011 the husband had been and continued to be self-employed, dismissed the appeal stating:

10. The problem here is that the sponsor EEA national has not been in this country for a period of 5 years. That is quite clear from his witness statement. This was not raised by the respondent in the RFRL but having noted it, I cannot ignore it. It is a fundamental point going to his rights and the rights of the appellant which derive from him. The appellant can only succeed as a family member of a qualifying EEA national. I refer to regulation 15 (1) (a), (b)

3. The appellant sought and was granted permission to appeal against this decision on the basis that the judge had erred in law by applying regulation 15 of the Immigration (European Economic Area) Regulations 2006 which relates to permanent residence despite the appeal being against a refusal to issue an initial confirmation of the right of residence.
4. On 14 May 2013, Upper Tribunal Judge Kebede made the following directions
 1. The appellants solicitors have requested that the hearing dated of 30 May 2013 be vacated and the appeal determined on the papers, in the light of the narrow issue in the case. The hearing date of 30 May 2013 has accordingly been vacated.
 2. In the light of the findings made by the First-Tier Tribunal judge in his determination promulgated on 25 February 2013, the absence of any challenge to those findings by the respondent and the basis of the grant of permission to appeal, the respondent is directed to advise the Tribunal, no later than ten days from the issue of these directions, whether the appeal is opposed, and, if so, to provide written reasons.
 3. The Tribunal will then decide whether or not to proceed to determine the appeal on the papers, with respect to the error of law and the merits of the appeal. Any further submissions are to be filed with the Tribunal and served upon the other party no later than days from the issue of these directions.
5. There has been no response to these directions. Accordingly, I am satisfied that neither party objects to the matter being determined without a hearing and has nothing further to say. I am satisfied that, for the reasons set out in the grounds of appeal, that the determination of the First-tier Tribunal did involve the making of an error of law as, despite directing himself [1] correctly that this was an appeal against refusal to issue a

residence card as confirmation of the right of residence, he then applied the law [10] applicable to applications for *permanent* residence. There is no indication that the judge raised with the appellant what he believed to be a problem. The error is clearly material as it was determinative of the outcome and the determination must therefore be remade.

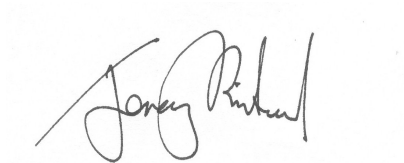
6. The determination requires to be remade. I am satisfied that on the basis of the judge's findings of fact, the appellant's husband is an EEA national and as he is self-employed, he is a qualified person within the meaning of the EEA Regulations 2006. I am satisfied also that as the spouse of such a person she is entitled to a residence card as confirmation of that. I therefore allow the appeal on that basis. It is therefore unnecessary to consider the article 8 aspects of this appeal.

Summary of conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
2. I remake the determination by allowing the appeal under the Immigration (European Economic Area) Regulations 2006.

Signed

Date: 30 May 2013

A handwritten signature in black ink, appearing to read 'Jonny R. [unclear]', is written over a faint, circular official stamp.

Judge of the Upper Tribunal