



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/10019/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 24th October 2017

Promulgated

On 4th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MRS RABIA ALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kamal (Legal Representative)

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mrs Rabia Alam, appeals with permission against the decision of First-tier Tribunal Judge Moore sitting at Taylor House on 24th August 2017. The Appellant had appealed against the Respondent's decision to refuse her application for a Residence Card as Confirmation of a Right to Reside in the United Kingdom pursuant to Regulation 6 of the Immigration (EEA) Regulations 2006. The single but important issue before the judge was whether the Appellant had provided adequate evidence demonstrating that her EEA partner was currently economically active in the United Kingdom

as a self-employed person. The Appellant's husband is Mr Alam and he is a national of Austria.

2. The grant of permission in this case by First-tier Tribunal Judge Page sets out the background to the original appeal and I refer to it. At paragraphs 2 and 3 it is said as follows,

"2. The basis for the Respondent's decision was that the Respondent was not satisfied that the Appellant had provided adequate evidence demonstrating that her EEA family member (spouse) was currently economically active in the UK as a self-employed person. At paragraph 19 of the decision the judge said that the appeal must fail due to the absence of credible and reliable evidence demonstrating economic activity on the part of the Sponsor at the time of the application that he was a self-employed person under Regulation 6. An issue in the appeal was whether taxi drivers working for Uber are employees or self-employed. The error of law complained of in the application for permission to appeal is that the judge erred by relying on an unlisted case before the Employment Tribunal which was still due to be heard on 17 and 18 September 2017 in the Employment Appeal Tribunal on the issue of whether a Uber driver would be treated as an employee or self-employed. It is argued that the judge was wrong to treat the Appellant as an employee and ask for evidence of an employment letter from Uber. Permission to appeal is granted on this ground.

3. The application for permission to appeal also seeks permission to appeal on the ground that the judge has disregarded evidence. The application states 'the Appellant provided plenty of evidence in the hearing bundle of 122 pages to prove that the Sponsor was in economic activity at all material times but it was also ignored'. This is a sweeping statement that is not sufficiently particularised to identify an arguable error of law. I do not grant permission on this ground. Permission is granted to appeal on the issues surrounding the status of Uber drivers only."

3. At the hearing before me morning, I heard submissions initially from Mr Kamal. He submitted that the Judge had materially erred in law because the issue of whether Uber drivers are employees or self-employed was irrelevant in this case. He said that in any event the position was that there was significant evidence from the HMRC documents and calculations in the bundle at the Tribunal to show that there was self-employment. Mr McVeety assisted the Tribunal to say that in relation to that ground there was no opposition from the Secretary of State and that on that basis the appeal would not be opposed. Mr Kamal took me to other aspects of the appeal and said that it should be allowed. Mr McVeety's position was that it would be

appropriate to remit the matter to the First-tier Tribunal and for the documentation to be properly evaluated and considered.

4. Insofar as the issue in relation to Uber drivers is concerned and whether there is a contract of service or contract for services is a very interesting legal issue particularly in relation to the so-called "gig economy" and these are terms of art in Employment Tribunal. I am sure there will be further appeals in respect of that case. But I have to say that I agree with both of the representatives in respect of the matters as they currently stand. The Judge simply got this aspect of the case wrong in the Immigration and Asylum Chamber. The matters in relation to Uber and the case at the Employment Tribunal were irrelevant for the purposes of the issues that the Judge had to decide. It also appears that the Appellant was very much taken by quite surprise in seeing the Judge's decision because it does not seem that the Judge raised the matter as an issue with the parties at the hearing. In the circumstances, there is a material error of law. The Appellant has not had a fair hearing. The appropriate course therefore is for there to be a complete rehearing at the First-tier Tribunal. None of the current findings shall stand. The hearing will be on all issues and that will take place at Taylor House. The only direction I give is that there be a Bengali interpreter (not Sylheti).

Notice of Decision

There is an error of law in the decision of the First-tier Tribunal.
The decision of the First-tier Tribunal is set aside.
There shall be a re-hearing at the First-tier Tribunal.

No anonymity direction is made.

Signed: Abid Mahmood

Date: 24 October 2017.

Deputy Upper Tribunal Judge Mahmood