



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

Appeal Number: EA/04038/2019 (V)

THE IMMIGRATION ACTS

**Heard remotely from Field House
On 2 June 2021**

**Decision & Reasons Promulgated
On 18 June 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MS DURGADEVI BABUBHAI DUBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

The hearing was conducted on Microsoft Teams

Representation:

For the Appellant: Mr E Nicholson, Counsel, instructed by A Y & J Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant appeals with permission against the decision of First-tier Tribunal Judge Abebrese ("the judge"), promulgated on 25 March 2020, by which he dismissed the Appellant's appeal against the Respondent's refusal to issue a residence card pursuant to regulations 9 and 18 of the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

The Appellant, a citizen of India, is the daughter of Mr Babulal ("the Sponsor"), a British citizen who had exercised free movement rights in the Republic of Ireland and had then come back to the United Kingdom. The Appellant had

resided in the Republic of Ireland with the Sponsor, albeit for a brief period of time, before she too came back to this country.

The Appellant had had a previous appeal to the First-tier Tribunal dismissed in 2017 (EA/07842/2017, decided by First-tier Tribunal Judge Rowlands). Judge Rowlands had not been satisfied that the Appellant had intended to reside permanently in Ireland and that her residence in that country had not been genuine. However, he had also concluded that the Sponsor's residence in that country *had* been genuine. Judge Rowland's overall conclusion that the Appellant's appeal felt to be dismissed was upheld on appeal by the Upper Tribunal, errors were identified, but considered to be immaterial. The Upper Tribunal noted the absence of evidence on certain matters relating to the Appellant's residence in Ireland.

In respect of the present appeal, the judge directed himself to the Devaseelan principles and concluded that there were no reasons to "reverse the previous decision of the Tribunal." He found that the Appellant's residence in Ireland was not genuine and was simply a method of seeking to circumvent the "domestic Rules." The judge also concluded that the Sponsor's reasons for moving to Ireland was to facilitate the Appellant's ability to obtain status in the United Kingdom and that the Sponsor had not transferred the centre of his life to Ireland. The appeal was accordingly dismissed.

The grounds of appeal in essence assert that the judge erred in respect of the Devaseelan issue, having failed to take any or any adequate account of new evidence and that the judge misdirected himself in respect of the decision of the Upper Tribunal in ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan [2019] UKUT 281 (IAC).

At the outset of the hearing, Ms Everett accepted that the judge had materially erred in law, as asserted in the grounds of appeal.

I can deal with my conclusions in this case briefly, given the Respondent's stated position, with which I agree. The relevant errors of law are as follows:

the judge failed to engage with the new and relatively detailed evidence provided by the Appellant and her Sponsor, all of which post-dated the 2017 decision of Judge Rowlands;

if the judge was purporting to reject this new evidence, he failed to provide adequate reasons for so doing;

that whilst purporting to follow the findings of Judge Rowlands in line with the Devaseelan principles, the judge misunderstood what at least one of those findings amounted to, namely that the Sponsor's residence in Ireland had been genuine;

that the judge failed to adequately consider the potential impact of ZA. That decision, on the face of it, had a direct bearing on the issues in the present case. However, the judge's only reference to it was in passing and only to the effect that he believed it did not "sufficiently affect" his conclusions. With respect, that was inadequate.

The errors are material, the judge's decision is flawed, and I exercise my discretion and set it aside.

In terms of disposal, I have concluded that this appeal should, on an exceptional basis, be remitted to the First-tier Tribunal for a complete re-hearing. The question of the Appellant's intentions in residing in Ireland need to be addressed in light of the new evidence and ZA. None of this has yet been done and in my view it is appropriate for this factual assessment to be undertaken by the First-tier Tribunal. No findings of fact are to be preserved. The Devaseelan principles will continue to apply in respect of the remitted hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions to the First-tier Tribunal

- 1) This appeal is remitted to the First-tier Tribunal, to be re-heard by a judge other than Judge Abebrese;**
- 2) The First-tier Tribunal will issue any additional case management directions deemed appropriate.**

Signed H Norton-Taylor

Date: 4 June 2021

Upper Tribunal Judge Norton-Taylor