



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/01376/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 2 July 2014

Determination Promulgated  
On 7 August 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

WAQAS KHALID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Not present or represented  
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Waqas Khalid, was born on 20 September 1985 and is a citizen of Pakistan. The appellant had appealed against the refusal by the respondent of his application for a residence card as confirmation of his right to reside in the United Kingdom as the spouse of an EEA national (Lucie Sidakova – hereafter referred to as the sponsor). The appellant appealed against that decision to the First-tier Tribunal

(Judge Pirotta) which, in a determination promulgated on 19 March 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant did not attend the hearing of the Upper Tribunal on 2 July 2014 nor was he represented. I am satisfied that a notice of the hearing was sent both to the appellant and to his solicitors (Sky Solicitors Ltd) by first class post on 3 June 2014. In the absence of any satisfactory explanation for the absence of the appellant or his representatives, I decided to proceed with the hearing in any event.

3. In her determination at [20], Judge Pirotta had written:

As the Secretary of State is not represented in these proceedings as a direct result of the appellant having elected a determination on the papers and by virtue of the late service of the bundle, the Secretary of State was not afforded an opportunity to review the decision in the light of further material. The Secretary of State has no choice in the matter once the appellant has elected to have a determination on the papers. It would not be appropriate to consider whether the appellant would have met the criteria of the sponsor exercising Treaty Rights or whether he met the other tests of the application which he had submitted had the Secretary of State had access to that material.

4. The grounds complain of the refusal by the judge to consider documentary evidence which had been submitted in support of the application. Mrs Pettersen, for the respondent, accepted that the judge had erred by refusing to consider the documents provided by the appellant given that this was not a points-based decision under appeal but an in-country appeal and there was nothing to prevent the evidence from being admitted by the judge. In the circumstances, I set aside the determination of the First-tier Tribunal and have remade the decision.

5. Mrs Pettersen made a number of submissions to me regarding the documentary evidence. Much of that evidence is concerned with the appellant's attempts to prove that the sponsor was exercising Treaty Rights in the United Kingdom as a worker. The refusal letter of 10 December 2013 records that attempts were made to contact the sponsor's claimed employer on 24 and 25 September 2013 but "no answer could be obtained." Accordingly, because the "employment of your sponsor could not therefore be verified", the appellant had been refused a residence card. Mrs Pettersen drew my attention to other evidence which concerned another of the sponsor's claimed employers, SM Plumbing Services. There is a wage slip from this firm, bearing the sponsor's name, for 6 June 2014. The wage slip shows no deductions for income tax or national insurance. The wage slip records that the sponsor worked for twenty hours at the rate of £6.31 per hour. The net payment shown on the wage slip was £126.20. The supplemental bundle which has been submitted by the appellant's solicitors under cover of a letter dated 18 June 2014 refers to these payslips and also an employment letter from SM Plumbing Services dated 13 June 2014. Also enclosed are "bank statements of Mr Khalid [the appellant] confirming wages of his sponsor going in (*sic*)". The bank statement provided is for the period 29 April 2014 - 9 June 2014. This shows one payment of "sponsor's wages going in" that is, on 9 June 2014 where there is a transfer of the sum of £126.00 from a Mr Muhammad Sarfra (presumably, the proprietor of SM Plumbing Services). Mrs

Pettersen submitted that there was no correlation between the wage slip (for £126.20) and the transfer into the appellant's account (of £126.00). She also submitted that it was significant that the sponsor's wages were not paid into her own bank account but into that of the appellant. These anomalies were, in her submission, a clear indication that the evidence was not credible.

6. I agree with Mrs Pettersen. If the sponsor's wages were, as the covering letter with the bundle suggested, paid into the appellant's account it is not clear what has happened to the 20 pence over and above the transfer payment which appears on the appellant's wage slips. I also agree with Mrs Pettersen that it makes no sense (without further explanation or evidence which have not been forthcoming) that the sponsor's own wages are not paid to her or into a joint bank account but to the appellant.
7. I find that the anomalies which I have described above are sufficient, in the absence of any proper explanation, to cast significant doubt upon the credibility of the evidence adduced by the appellant. I am reminded that the burden of proof in the appeal rests on the appellant subject to the standard of proof of the balance of probabilities. I am not satisfied that the appellant has discharged the burden of proving that the sponsor has exercised and is exercising Treaty Rights in the United Kingdom as an EEA citizen. The appeal against the immigration decision is dismissed accordingly.

### **Decision**

8. The determination of the First-tier Tribunal which was promulgated on 19 March 2014 is set aside. I have remade the decision. The appellant's appeal against the respondent's decision dated 10 December 2013 is dismissed.

Signed

Date 1 August 2014

Upper Tribunal Judge Clive Lane