



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/24043/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> November 2014

Determination Promulgated  
On 5<sup>th</sup> December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

MR ANDREI KALIBA  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Goh, Counsel, instructed by Uganda Community Relief Association

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The appellant is a citizen of Uganda born on 2<sup>nd</sup> June 1980. He applied for a permanent EU residence card in approximately April 2014 as the spouse of Ms

Iwona Szczgielska a citizen of Poland who is said to have exercised Treaty rights in the UK for a period of more than five years. This application was refused by the Secretary of State on 16<sup>th</sup> May 2014. His appeal against the decision was dismissed by First-tier Tribunal Judge Rose in a determination on the papers dated 25<sup>th</sup> August 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Ransley on 16<sup>th</sup> August 2014 the basis that it was arguable that the First-tier judge had erred in law in law in consideration of whether the appellant was entitled to a permanent resident card. Judge Rose had found that the appellant had not shown his spouse had been a qualified person for the requisite 5 year period under Regulation 15 of the Immigration (EEA) Regulations 2006 (henceforth the EEA Regulations). It was arguable that consideration had not been given to the appellant's spouse's time as a job-seeker which was evidenced by some emails. It was also arguable that Judge Rose had not considered Article 8 ECHR in accordance with the law.
3. The matter came before me to consider whether the First-tier Tribunal had erred in law.

#### *Submissions*

4. I initially had difficulties understanding Ms Goh's submissions with regards to the error of law under the EEA Regulations however with help from the caseworker from the Uganda Community Relief Association it was established that the complaint against the First-tier Tribunal was that there had been a failure by Judge Rose to understand that in fact the appellant's spouse had been employed from May 2012 as a staff nurse by the London Clinic so had only had four months unemployment (and thus time as a jobseeker), as it was accepted that she was a student from October 2008 to January 2012. The emails (dated 9<sup>th</sup> March 2012 and 15<sup>th</sup> May 2012) in fact referred to the job she eventually took with the London Clinic as a staff nurse and the one dated 14<sup>th</sup> March 2013 referred to the promotion she achieved with the same employer. In support of the contention that the appellant's spouse was so employed was a letter from the London Clinic dated 27<sup>th</sup> March 2013 which informed her she was offered a promotion. It was accepted however that the P60 for the appellant's spouse had been mixed up with the P60 of the appellant and the wrong lower parts sellotaped to the tops so it looked as if the appellant's spouse had only earned £341.36 from her work in the year April 2012 to April 2013 when this was the amount the appellant had earned.
5. It was also argued that Judge Rose had erred in his approach to Article 8 ECHR. What was written at paragraph 14 of the determination was very confusing and there should not have been a determination on this issue if Judge Rose did not feel he had sufficient material to show family life.
6. Mr Bramble submitted that Judge Rose had made a reasonable assessment of the evidence before him. If the appellant's spouse had been a jobseeker from January 2012 to March 2013 (when the definite evidence of employment was available), and thus for 14 months, then it was fair of Judge Rose to find that the three emails

and CRCB check evidence did not suffice to show that she qualified as such under the EEA Regulations.

7. Mr Bramble argued that Judge Rose had dealt with Article 8 ECHR adequately. Paragraph 14 may be a bit unclear but that this was resolved by paragraph 16 of the determination. It was not relevant that Judge Rose had not looked at the matter under the Immigration Rules as there was no argument it could have succeeded in this way by the appellant.

*Conclusions – Error of Law*

8. Judge Rose did not err in law in the determination of the appeal under the EEA Regulations. If the appellant or his representatives have sellotaped the wrong part of the P60s back together so as to swap the appellant's and Ms Szczgielska's earnings over for the year ending April 2013 then this was an error on their part. Judge Rose, who dealt with this matter on the papers, could not be expected to have worked this out, particularly because there was no other clear evidence before him (for instance a contract of employment, payslips or a letter offering employment) that the Ms Szczgielska had obtained a job as a nurse with the London Clinic as a result of an interview in March 2012; started work in May 2012; and continued in the same employment to date with a promotion in March 2013. The documents before Judge Rose were consistent with this history, but it was not spelt out to him in a statement and the documents alone were extremely confusing due to the way that they were presented.
9. If the appellant wishes to obtain a permanent card he needs to make a new application to the Secretary of State with clear evidence showing that Ms Szczgielska started work for the London Clinic in May 2012 having received a job offer in March 2012, as well as evidencing her studies from October 2008 to January 2012 and her work since May 2012, and any other matters required by the application form. It would be advisable that the history of all of her activities as a qualified person under Regulation 6 of the EEA Regulations is set out in a chronologically arranged statement referring to the documents in support so that the way in which the appellant and Ms Szczgielska are said to meet Regulation 15 of the EEA Regulations is clear.
10. Judge Rose did however err in his treatment of the Article 8 ECHR appeal. As Mr Bramble accepts what is said at paragraph 14 of the determination is extremely confused. If there was insufficient evidence of family life then the determination should have stopped there.
11. If there was sufficient evidence of family life then it was clear that the appellant and Ms Szczgielska had a current lawful right to remain in the UK as there was clear evidence that Ms Szczgielska was a Polish national currently exercising Treaty rights as a worker and the appellant was her spouse. Ms Szczgielska was therefore entitled to have the appellant, her spouse, with her in the UK as a family member in accordance with Regulations 6, 7 and 17 of the EEA Regulations and any interference with that right was not in accordance with the law, as it is clear that the appellant was (and is) entitled to an EEA residence card on this basis.

12. As a result what was said about the interference being in accordance with the law at paragraph 14 of the determination of Judge Rose is incorrect, and what is said at paragraphs 15 to 18 wrong as a consequence.

*Conclusions – Re-making Human Rights*

13. I accept that the appellant and Ms Szczgielska have family life together in the UK as they are married and there was substantial evidence before the Tribunal placing them at the same address. In the circumstances – and for the reasons set out above at paragraph 11 - I find any removal would interfere with their right to respect for family life and would not be in accordance with the law.

Decision

14. The decision of the First-tier Tribunal involved the making of an error on a point of law in the determination of the appeal under Article 8 ECHR, but not with respect to the determination of the appeal under the EEA Regulations.
15. The decision of the First-tier Tribunal is set aside with respect to the determination of the appeal under Article 8 ECHR
16. The appeal is remade so that the appeal is allowed on human rights grounds.
17. The appeal against refusal of a permanent residence card remains dismissed under the EEA Regulations.

Deputy Upper Tribunal Judge Lindsley  
29<sup>th</sup> November 2014

Fee Award                      Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it on human rights grounds, I have considered whether to make a fee award. I was not asked to make a fee award and do not find it appropriate to do so in all the circumstances.

Deputy Upper Tribunal Judge Lindsley  
29<sup>th</sup> November 2014