



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/43560/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 17 March 2014

Determination Promulgated  
On 26<sup>th</sup> March 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

YVONNE ELSKE SIGGEMANN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant, in person  
For the Respondent: Mr I Jarvis

DETERMINATION AND REASONS

1. The appellant is a citizen of South Africa who applied for permanent residence in the United Kingdom. She made that application on the basis of being a family member of an EEA national who has resided in the United Kingdom in accordance with the

Immigration (European Economic Area) Regulations 2006 for a continuous period of five years.

2. The application was refused because the respondent decided that the appellant had not provided evidence that her EEA national husband had resided in the United Kingdom in accordance with the relevant Regulations during that five year period.
3. The appellant appealed that decision. In a decision promulgated on 28 January 2014 the First-tier Tribunal Judge who dealt with the appeal “on the papers” dismissed the appeal.
4. The appellant sought permission to appeal the decision and leave was granted. The judge granting permission stated that in dismissing the appeal the judge found that the appellant’s husband, her sponsor, had not shown that he was working during the relevant period of 2008-2009. A letter from Objective Corporation confirming his employment from February 2008 to March 2009 was found to be reliable. However, the judge dealing with the appeal found that it was reasonable to suppose that the sponsor would have been able to produce his P45 relating to employment with that Corporation or other contemporaneous evidence of his employment. It was found arguable that the sponsor had provided sufficient documentation confirming employment with Objective Corporation full-time between the relevant dates. The judge having accepted that the letter produced was reliable it was arguable that to have required further evidence was in the circumstances unwarranted as the burden of proof is only on the balance of probabilities.
5. The Secretary of State’s response to the grounds of appeal under Rule 24 indicated that she opposed the appellant’s application to appeal the First-tier judge’s decision and argued that the judge was entitled to find that Sayl Consulting Limited (a company set up by the sponsor) was not showing activity and therefore the respondent could not be satisfied that the EEA sponsor was exercising treaty rights for the period 2008 - 2009. In relation to Objective Corporation the judge found that the letter stated that the sponsor was employed from February 2008 to March 2009 but there was no evidence of salary or other evidence of employment. The judge was entitled to make that finding in the absence of evidence to show that the sponsor was employed. Also the judge expressed concern that there was nothing to indicate that Objective Corporation and Global IT Professional Services UK were linked. The appellant could not seek to rely on evidence that was not before the judge.
6. Before me Mr Jarvis on behalf of the respondent did not seek to maintain the argument on behalf of the Secretary of State and conceded that there is an error of law in the determination and that the appellant has in fact provided the necessary evidence to show that she complies with the requirements of the Regulations.
7. The Reasons for Refusal Letter shows, in essence, that although the respondent had checked that the appellant’s sponsor (and husband) is currently a Director of Sayl Consulting Ltd he has only been so for four years and he had not shown the five years continuous exercising of treaty rights necessary to qualify for permanent

residence. Furthermore, there was a lack of evidence to demonstrate the economic activity of this company since 2009 until the date of refusal in September 2013.

8. In addition the respondent noted that the appellant provided no evidence of how her husband sponsor was exercising treaty rights in the UK as an employed person from 31 March 2008 to 31 March 2009, the date he became a Director of Sayl Consulting.
9. So it can be seen that the respondent accepted that the sponsor has been a Director of Sayl Consulting for four years. A Corporation tax return was produced as well as a business reserve bank account statement and further bank statements in the company's name showing transactions to accountants in account transfers. The appellant also provided bank statements showing various transactions such as salary being paid and also dividends, proving that the account was active.
10. Paragraphs 7 through to 11 of the determination appear to set out why the judge does not consider that evidence shows on balance that the appellant has established that her husband sponsor was working for Sayl Consulting. On the face of the documents produced the sponsor is a director of that company. Whereas many of the points made by the judge are good and valid ones it is difficult to conclude that the correct standard of proof has been applied.
11. In relation to the sponsor's employment with Objective Corporation from February 2008 to March 2009 the judge accepts the letter as reliable. No doubt the judge would have preferred more evidence in the form of a P45 from that employment giving precise dates and the person's specific details, such as salary or, for example, employee number as referred to in paragraph 12 of the determination.
12. The appellant produced P60s for the tax years 2007-2008 and 2008-2009 and although not understanding perhaps unsurprisingly, the link between Global IT Professional Services UK and Objective Corporation it is difficult to conclude also that the judge was entitled to state as she does in paragraph 13 that she cannot be satisfied that the sponsor was working during the relevant period 2008-2009.
13. There might have been a hint of a suggestion that there was some kind of fraud involved because the sponsor was apparently working for two different companies at the same time but that is not expressed anywhere.
14. The evidence provided should have led to a finding that the sponsor was employed during the relevant period. As it happens the explanation given by the appellant in the grounds seeking permission to appeal is that the sponsor was sub-contracted to one company by the other for part of the period. That is not, however, a matter that I take into account in finding the relevant error.

## **Conclusions**

15. For the reasons given above I find that the judge erred in applying a too high standard of proof and the determination is set aside. The appellant is entitled to succeed on the evidence that was provided in relation to her application as a family

member of an EEA national who has resided in the UK in accordance with the European Economic Area (EEA) Regulations 2006. Therefore the appellant has acquired the right to reside in the United Kingdom permanently.

**Decision**

16. The decision of the First-tier Tribunal Judge is set aside and for the decision that the appeal fails is substituted a decision allowing this appeal.
17. Anonymity has not been sought in this appeal and in the circumstances do not appear to warrant an anonymity direction being made.
18. Appeal allowed.

Signed

Date

Upper Tribunal Judge Pinkerton