



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

Appeal Number: IA/47652/2013

THE IMMIGRATION ACTS

Heard at Field House

On 15th July 2014

Determination

Promulgated

On 5 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR ASAD BASHIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Litchfield, Counsel, instructed by Khans, solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan whose appeal was allowed by First-tier Tribunal Judge Wiseman in a determination promulgated on 8th April 2014. Grounds of application were lodged on the basis that the judge erred in law by failing to give adequate reasons for the finding that the

Sponsor was a qualified person at all material times. It was said that the Sponsor's circumstances of having had periods of unemployment between jobs did not fall within the scope of the Regulations.

2. Permission to appeal was granted and thus the case came before me on the above date.
3. For the Home Office Mr Tufan relied on his grounds and went no further than that. He was correct not to do so. For the Appellant Ms Lichfield said that both at the date of decision and date of the hearing the Sponsor was exercising treaty rights and there was no error of law in the judge's determination.
4. I indicated to parties that I considered the crucial date was whether the Sponsor was working at the date of the hearing of the appeal and it appeared that the judge had accepted she was. I formally reserved my decision.

Conclusions

5. The judge heard evidence from the Appellant and his Lithuanian spouse Ms Nazarova. Both witnesses said she was working as at the date of the hearing. The judge focused initially on whether the marriage was a genuine one and for reasons given (paragraphs 51 to 55) concluded that "this is indeed a genuine and subsisting marriage."
6. The judge then went on to consider whether or not Miss Nazarova was a "worker" within the meaning of the Regulations. He referred to the documentation and noted that there was at least a period of self-employment and that she was now a company director with the Appellant. It was only in the last few weeks that she had started her latest sales job with M-Bitz. He concluded that she was a qualified person in terms of Regulation 6 of the 2006 Regulations.
7. While the judge does not actually say that he was accepting the evidence from the Appellant and Sponsor in relation to the Sponsor working in the United Kingdom the only reasonable inference was that he was accepting that evidence as true. I say that because the judge had accepted the evidence of the marriage as genuine and there is nothing in his decision to suggest that he thought anything other than that the Appellant and Sponsor were credible and reliable witnesses. Had he thought otherwise then no doubt he would have said so. It is clear from paragraph 60 that he was accepting the documentation because he went on to find that the Appellant was a qualified person in terms of the Rules.
8. I refer to Boodhoo and Another (EEA Regs: Relevant Evidence) [2013] UKUT 00346 (IAC) where it was found by Mr Justice Blake following a concession from the Home Office that the judge ought to have allowed that appeal because the Appellants had produced proof of their entitlement to remain "under the Regulations at the date of the appeal."

The evidence before Judge Wiseman at the date of this appeal was that the Sponsor was working and thus the Appellant was entitled to succeed in terms of the 2006 Regulations. That is what the judge found and there is manifestly no error of law in such a finding.

Decision

9. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
10. I do not set aside the decision.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald