



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/48323/2013
IA/48330/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th June 2014

Determination Promulgated
On 27th June 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS JOSEPHINE ADAMMA UZOARU
MISS MERRILY OBIANUJU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Bajwa (A Bajwa & Co, Solicitors)

For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellants with regard to a determination of the First-tier Tribunal (Judge Obhi) promulgated on 8th April 2014. In her determination Judge Obhi dismissed the Appellants' appeals against the Secretary of State's refusal to issue them with residence cards as the family members of an EEA national (the first Appellant's husband).

2. There was a single issue in this appeal and that was whether or not the first Appellant's husband (the Sponsor) was a qualifying person. In the determination the Judge makes clear that she heard evidence from the Sponsor but not from either Appellant. Throughout the determination the Judge refers to the disarray of the documentary evidence. The application form had been left blank with regard to employment and papers were submitted separately. There were also a number of documents submitted at the hearing, ambushing the Home Office Presenting Officer who had no opportunity to check them. However, I note there was no application for an adjournment by the Home Office Presenting Officer. Furthermore, despite the fact that between the date of application and the date of decision the Sponsor had changed employment, he failed to notify the Secretary of State about that. Accordingly, when the Secretary of State contacted the employers she was informed he was no longer employed by them. This led the Secretary of State to the inevitable conclusion, absent any further information from the Appellants, that he was no longer a qualifying person.
3. At paragraphs 22 and 23 of the determination Judge Obhi says:-

"The evidence is disjointed and unclear. The only real evidence of payments is in respect of the employment with Curocare and Clearwater. There is no evidence of actual payments from Little Gems. Although I suspect that the Sponsor was employed during at the relevant time (sic), I am struggling on the documents provided to find on a balance of probabilities he was, because of anomalies in the documents, for example a letter offering employment which is not on headed notepaper, a contract of employment in relation to employment which started before the offer of employment, the absence of any evidence in relation to another employment. I note that the Sponsor provided (again on the morning of the hearing) a partial assessment of tax form for the HMRC, this suggests that he was employed and earned in excess of £30,000 for the year ending in April 2013, but again it is not the original form and only part of it has been provided.

The issue between the Secretary of State and the Appellant is with regard to the Sponsor and whether he is a qualified person. I have no doubt that the decision of the Secretary of State was correct based on the incomplete application form and a complete lack of information provided at the time of the application. The question for me is whether the evidence now provided a sufficient to compensate for that deficiency. The date for the determination of facts is the date of the hearing, as this is an in country appeal. There is some evidence that the Sponsor's employment is continuing with Clearwater Care, however, I am not satisfied on a balance of probabilities that he is employed as he claims. There was no explanation for not providing details on the application form. Much of the evidence has been provided at the hearing without providing the Secretary of State with an opportunity to consider the papers and make independent enquiries in relation to the claims. I consider that in this case such an opportunity should be afforded to the Secretary of State, particularly as there has been a previous concern about the Appellant and her daughter's possible deception. I am informed that there was an appeal on that issue in 2008 when her leave to remain in the UK was curtailed was resolved, and that there had been no deception. However the Appellant has not given evidence and so could not be asked any questions about that."

4. I have a degree of sympathy with the First-tier Tribunal Judge who was struggling to make sense of the evidence in this appeal. The Judge was quite justified in her concerns about the disarray of the evidence and the papers coming in piecemeal and like confetti at the hearing. The submissions before me were similarly confused. As Mr Bajwa took me through the grounds he was concentrating on where he suggested the Judge had made errors in her findings of fact as to the presence or otherwise of documents before her. For example, the Judge said that although there were payslips from the Sponsor's employment with Little Gems there were no corresponding entries in the bank statement. Mr Bajwa sought to persuade me otherwise but when I asked him to take me to the bank statements which tallied with the payslips before the judge he was unable to do so.
5. Mr Bajwa stressed that the application form says on its face that its completion is not mandatory. Whether or not that is the case it, is an extraordinary submission. A person submitting an application to the Home Office for a residence card or any other form of application would be well advised to complete the form as fully as possible and to submit supporting documentation if they have any hope of succeeding.
6. The Judge was quite right in her finding at paragraph 23 that the decision of the Secretary of State was correct on the basis of the incomplete application and lack of supporting evidence.
7. Although Mr Saunders urged me to uphold the determination on the basis that the Judge's findings based on the confused evidence were sustainable I find that the Judge did make an error.
8. Having heard submissions supporting the grounds seeking permission to appeal in the Upper Tribunal, I can imagine the frustration of the First-tier Tribunal Judge trying to make sense of this application and appeal. However, it would seem that that frustration has led her to lose sight of the central issue; namely whether the Sponsor, was a qualifying person at the date of the hearing before her. There was in the bundle before her copies (and the originals were produced) of a P60 issued to the Sponsor for the tax year ending April 2013 from Clearwater Care (Hackney) Ltd showing employment during the tax year with that company of £105. It was his case that he had just started that employment. Also payslips were produced from the same company for January and February 2014. Those show the amount of pay and tax and national insurance paid to date during the financial year. Those clearly indicate that the Sponsor has been and continues in employment with that company since shortly before April 2013. Accordingly, whatever other employment he may or may not have had in the past and between the date of application and the date of decision; at the date of hearing there was clear evidence that he was a qualified person, namely a worker and that remains the case today.

9. I asked Mr Saunders whether he wished to challenge the veracity of the P60 and the payslips. While indicating that he did not accept those documents he made no specific challenge to them nor did he seek an adjournment to check their veracity. He asked me to resolve the issue. I was given no reason to doubt that those documents were genuine. The payslips referred to were two in a whole sequence of payslips from the same origin and I therefore accept that they are what they purport to be.
10. I therefore find that the First-tier Tribunal erred in its approach to the central issue in this case, namely whether or not at the date of hearing the Sponsor was a qualifying person when there was clear evidence that he was. I therefore set aside the determination and redecide the appeal which I allow.
11. I would add that the Appellants in this case would have been better advised to complete the application forms properly and fully with accompanying documentation. Had they done so in all probability the applications would have been successful thereby avoiding the delay and cost occasioned by an appeal. Furthermore, if the papers had been properly in order before the First-tier Tribunal again they would no doubt have succeeded thereby also avoiding the cost of this appeal to the Upper Tribunal.
12. The appeal to the Upper Tribunal is allowed.

Signed

Date 27th June 2014

Upper Tribunal Judge Martin