



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

Appeal Number: IA/50163/2013

THE IMMIGRATION ACTS

Heard at Field House

On 29th April 2014

**Determination
Promulgated**

On 8th May 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**SOLOMON IZY AKHUEMONKHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Richard Ugoh, Liberty & Co Solicitors

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

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born 26 May 1972. In November 2013 the appellant made an application for a residence card. In a letter dated 20 November 2013 the respondent refused the application as it was not accepted that the appellants family member was an EEA national exercising treaty rights at the time of the application. Full reasons were set out in the above mentioned letter.

2. The appellant appealed that decision and in doing so requested that the appeal be dealt with “on the papers” without an oral hearing. As a consequence the matter was considered by Judge of the First-Tier Tribunal Nixon in February 2014. In a determination dated 28 February the judge dismissed the appellants appeal on all grounds. In doing so the judge noted that the respondent had made enquiries as a result of the application, but had found that the appellants family member was no longer employed as set out in the application. The judge noted that there was evidence of fresh employment, but there was no acceptable evidence that the appellants family member was indeed working at the relevant time (the date of hearing). The judge came to the conclusion that an attempt to deceive had been made in respect of the work details set out in the application.
3. At paragraph 12 of the determination the judge makes reference to the request that the case be dealt with “on the papers” and indicated a view that the additional evidence with regard to new employment had not been disclosed to the respondent.
4. The appellant sought leave to appeal on a number grounds. The first ground alleges that the judge failed to appreciate the evidential burden of proof and in particular the judge had failed to correctly consider the provisions of the EEA (Immigration) Regulations 2006.
5. The second error refers to the judge’s view that misleading information had been given in the application and that the judge had failed to consider whether or not the appellant’s wife was a “qualified person” under the EEA Regulation.
6. Thirdly the judge is criticised for the comment made regarding non-disclosure of additional evidence to respondent. It is submitted that the appellant’s solicitors had produced a bundle to the respondent in furtherance of directions.
7. Finally it is alleged that the judge had not properly applied the proportionality test in respect of Article 8, ECHR.
8. The application for leave came before another Judge of the First-Tier Tribunal who, on 21 March 2014, granted leave primarily with regard to the comments made by the judge regarding the service of additional documentation upon the respondent and the assumption made by the judge that such documentation had not been served. In granting leave the judge also indicated that all grounds “may be argued”.
9. Hence the matter came before me in the Upper Tribunal.
10. Mr Ugoh referred to the grounds seeking leave. In addition he indicated that the respondent had not provided evidence before the judge regarding full details of the telephone call made to the stated employer of the appellant’s wife. As a result the judge may have come to the wrong conclusion on the evidence. Even if the wife was not employed, she could still be a qualified person under the regulations. Mr Ugoh said that at the date of the call the appellant’s wife was still in employment. Mr Ugoh emphasised that the full bundle had been served upon the respondent in advance of the date of the judge’s determination, it was wrong for the judge to say what he did at line 7, paragraph 12 of the determination. Mr Ugoh said that it was a conscious

decision on the part of the appellant to have the case dealt with on the papers. He had satisfied the requirements.

11. Mr Ugoh then referred me to the guidance notes in respect of the original application. There was no requirement for bank statements or any other information. Mr Ugoh took the view that once the deadline for filing documentation had been passed the appellant was not in a position to seek to lodge any further documents.
12. Mr Bramble in response emphasised that it was a “paper case” at the request of the appellant. The question of misleading evidence had been raised in the refusal letter, but there was still no explanation before the judge. It had been open to the appellant to make an explanation. Both the appellant and the sponsor would have been aware of the issue to be decided, but had failed to address that issue. Mr Bramble acknowledged that the appellant’s wife could still be a qualified person even if she were not working but no evidence had been provided by the appellant or sponsor to enable the judge to make such a finding. Mr Bramble indicated that there was nothing wrong in the statement made by the judge regarding service of the bundle as there was nothing of any relevance contained in that bundle. The judge found that he was not satisfied and there was no problem with those findings. The determination was properly reasoned.
13. In response Mr Ugoh indicated that he had proof that the bundle had been served upon the respondent.
14. Following the submissions I indicated that I was not satisfied that there was a material error of law contained within the determination and the appeal would be dismissed and I now give my reasons.
15. The main thrust of the grounds seeking leave to appeal (and the grant of leave) revolved around the comments made by the judge at paragraph 12 of the determination that “I first note that none of this information has been shown to the respondent, the appellant requesting that his case is dealt with on the papers”. Those representing the appellant insist that the appellants bundle placed before the judge had been copied to the respondent in furtherance of the Tribunals directions. I have no reason to doubt that and upon that basis I accept that the comment made by the judge was incorrect. However, is this an error of law and if so, is it material? It may well be an error of law, but it certainly is not material when the determination is read as a whole.
16. It must be accepted that the judge had very little information or evidence before him. It was a conscious decision of the appellant (who was represented throughout) not to have an oral hearing. One of the issues before the judge was the information received from the respondent and set out in the decision notice that information showed that the appellant’s wife was not employed as stated in the application. Little or no explanation was forthcoming from the appellant or sponsor. The judge mentions bank statements. I readily accept that there is no specific requirement but such statements might have assisted the judge in identifying the precise periods during which the appellant’s wife was employed and who was employing her.
17. However, details of employment are not all the information that would be necessary for the appellant would be entitled to a residence card. It is common

ground that under the 2006 Regulations a person can be a “qualified person” even though not in actual employment at the relevant date. No evidence or information has been forthcoming from the appellant that would have enabled the judge to make a positive finding in the appellants favour. In addition, nothing is contained within the appellant’s bundle that would have direct relevance to issues before the judge.

18. Because of this paucity of evidence the judge could have come to no other conclusion. Despite making an error in whether or not the bundle would have reached the respondent, it would have had no material effect on the outcome of the appeal and therefore cannot be a material error of law.
19. Reference is made in the grounds (but not directly argued before me) regarding Article 8. I am satisfied that paragraphs 13 to 15 of the judges determinations quite clearly show that the judge properly directed himself with regard to “human rights” and again I find no error of law in the determination.
20. In these circumstances the appellants appeal is dismissed. There is no material error of law and the decision of the First-Tier Tribunal Judge must stand in all respects.
21. No anonymity order was previously made and there was no application before me in respect thereof.

Signed

Date

Upper Tribunal Judge Poole