



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

Appeal Number: IA/51627/2013

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham**

**Determination  
Promulgated**

**On 08 July 2014**

**On 21 July 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MIKE OSARETIN**

Respondent

**Representation:**

Appellant: Mr Smart, Senior Home Office Presenting Officer.

Respondent: Mr I Singh of Rakkani Solicitors.

**DETERMINATION AND REASONS**

1. This is a condensed version of the judgment given orally at the conclusion of the hearing of this appeal, in the presence of the parties' representatives, on 08 July 2014.
2. This appeal has its origins in an application made by the Respondent, Mr Osaretin, who is of Nigerian nationality and aged 34 years, for a permanent residence card under the Immigration (EEA) Regulations 2006.

This gave rise to a refusal decision on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 05 December 2013. The key reason for the refusal was based on information provided to the Secretary of State by HMRC, pursuant to an enquiry on the part of the former. This stimulated a letter dated 02 September 2013 from HMRC which stated, *inter alia*, that the National Insurance Number represented as being that of the Respondent's partner, did not correlate to her but, rather, related to a male person born in 2001. This prompted the following assessment in the letter of decision:

*"Due to our confirmation from HMRC we do not believe the documents you provided are genuine as claimed. Therefore we have not seen evidence of your EEA sponsor exercising Treaty rights in the United Kingdom for 5 years as required for permanence residence ....*

*As we have refused your application for permanent residence due to the fact we believe the evidence you submitted is forged, we have revoked your residence card which was issued on 27 May 2011 and you now have no valid leave to remain."*

3. The First-tier Tribunal (the "*FtT*") allowed the ensuing appeal. The Judge, having noted that the burden of proof was on the Appellant [now Respondent], recorded the evidence which I have rehearsed above. Having done so, the Judge turned to consider the evidence submitted on behalf of the Respondent. This included a series of pay statements and Forms P60 documenting that the National Insurance number concerned was that of his sponsor. The evidence also included material retrieved by the Respondent's solicitors from the HMRC website. This indicates that while every child in respect of whom a claim for Child Benefit has been made is allocated a "Child Reference Number" for the use of HMRC and DWP, this is discontinued at the age of 15 years and 9 months, when HMRC notifies each child of their National Insurance Number: in effect, a conversion takes place. This suggests that the statement in the HMRC letter quoted above cannot have been correct since, at the date when the letter was written, a person born in 2001 would have been aged no more than 12 or years. The Respondent also relied on a statement emanating from the HMRC website indicating:

*"HMRC's systems will automatically check your employee's National Insurance Numbers on your first FPS (or your Employer Alignment Submission) or when you report starting details for a new employee."*

The significance of this statement is that the evidence demonstrates that the Respondent's sponsor has had several jobs, with the result that, presumptively, her asserted National Insurance Number has been checked and verified by HMRC on more than one occasion.

4. In brief compass, the FtT found the evidence submitted on behalf of the Respondent persuasive and, further, found that the contents of the HMRC

letter were, in this discrete respect, incorrect. The Judge then proceeded to consider the other documentary evidence submitted with the application. Having noted the concerns expressed about aspects of these in the letter of decision, the Judge made the overarching conclusion that the Respondent had demonstrated that his sponsor has been working in the United Kingdom exercising Treaty rights for the requisite period. The appeal succeeded accordingly.

5. In the Secretary of State's application for permission to appeal, it was stated:

*"The Judge of the First-tier Tribunal has made a material error of law in the determination .....*

*The information before the FtTJ was incomplete. Attached is a House of Commons Library Standard Note (SN2481) on the question of National Insurance Numbers .... 'the automatic issuing of National Insurance Numbers is based on the receipt of child benefit: in brief, when a claim for Child Benefit is made, the child is allocated a Child Reference Number (CRN). When the child reaches 15 years 9 months this information is passed over to the NI Recording System, the CRN is converted into that person's NINO and HMRC notifies the person by sending them their NINO .....*' Clearly a male born in 2001 who is in receipt of child benefit will have a CRN which will in due course become the NINO of that person ....

*It is submitted that the first error as identified above led the FtTJ to place weight on documents submitted by the Appellant which contained a NINO which did not belong to the Appellant's spouse."*

Permission to appeal was granted in the following terms:

*"As set out in the grounds the National Insurance Number did not relate to the Appellant's spouse and could not be genuine. There is an arguable error of law in the determination."*

6. The first observation to be made about the application for permission to appeal is that, properly analysed, it did not disclose evidence calling into question the decision of the FtT. Carefully read, the excerpt from the House of Commons Library Standard Note is confirmatory of the documentary evidence retrieved from the HMRC website on which the Respondent relied and to which the FtT gave weight. Pausing at this juncture, it is clear that permission to appeal should not have been granted.
7. I further consider that permission to appeal should have been refused on the independent ground that the application for permission resolved to nothing more than a quarrel with the Judge's decision to give weight to one particular piece of evidence rather than another. The grounds

specifically used the language of “*placing weight*”. Simultaneously, the grounds miserably failed to identify the error of law said to have been committed by the FtT, in manifest contravention of Rule 24(5)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. This was no merely formal infirmity. It was, rather, a misdemeanour of considerable substance, one which should have alerted the permission Judge to the manifest lack of merit in the application. If any reinforcement of this assessment were required, it was to be found in the Appellant’s reliance in the permission application on new evidence. The application explicitly recognised this factor.

8. Furthermore, I consider that it should have been apparent to the permission Judge that, even taking the permission application at its zenith, no conceivable error of law had been committed by the FtT. In granting permission, the Judge adverted to the conflicting evidence before the FtT. I consider that the permission Judge ought to have realised that the application resolved to nothing more than a quarrel with the FtT for opting to give weight to the evidence adduced on behalf of the Respondent in preference to that on which the Secretary of State relied.
9. Finally, I record the submission on behalf of the Secretary of State that the FtT should have been mindful of its powers under Rule 45 of the 2005 Rules to give directions relating to, *inter alia*, the filing of witness statements. The existence of this power featured in the recently promulgated decision of Shen - v - Secretary of State for the Home Department [2014] UKUT 236 (IAC). It was not suggested, however, that the non-exercise of this power by the FtT in the present case was tantamount to an error of law. Furthermore, I observe that this issue lies outwith the grant of permission to appeal in any event.

## **DECISION**

10. I am satisfied that the decision of the FtT was not, on any showing, irrational. The Judge performed the judicial duty of considering the opposing pieces of evidence and the weighing thereof. The Judge’s preference for the evidence indicating that the statement in the HMRC letter must be incorrect lay comfortably within the range of options reasonably available. Hence it cannot be stigmatised irrational. This appeal has no merit and must be dismissed.
11. I dismiss the appeal and affirm the decision of the FtT.

Signed:

*Samard McCloskey*

THE HON. MR  
JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 12 July 2014