



IAC-FH-CK-V1

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

Appeal Number: IA/03257/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2015**

**Decision & Reasons Promulgated
On 30 October 2015**

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE McWILLIAM**

Between

**MR DANIEL OLAMIDE ADETU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Akindele, Counsel. A & A Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination of the First-tier Tribunal dated 1 April 2015. The appellant is a Nigerian national born 16 May 1990. On 30 September 2014 he made an application for a resident card as a confirmation of a right to reside in the United Kingdom. The respondent refused that application in a letter of 7 January 2015.

2. The respondent had not been satisfied that the appellant had provided sufficient evidence to demonstrate that their EEA Family Member ("the sponsor") was in employment in the UK and therefore exercising treaty rights in the United Kingdom as defined under Regulation 6 of the Immigration (EEA) Regulations 2006. The sponsor was his wife who is a Portuguese national and a student in the United Kingdom but who was said to have employment in order to have sufficient resources to live in the United Kingdom.
3. The Tribunal was presented with certain documentary evidence which purported to relate to the sponsors employment and in particular a letter dated 4 March 2015 from "So Clean" which confirmed that the sponsor started working with that company on 14 February 2015 and had worked a total of 50 hours. The Tribunal concluded at paragraph 11:

"In any event it is clear that the sponsor was not working for this organisation at the time of the application or at the date of the decision."

It was not satisfied that the appellant had shown that the sponsor was a qualified person as a worker within the United Kingdom. The appeal was therefore refused.

4. The appellant appealed to the Upper Tribunal on the basis of an error of law in that the First-tier Tribunal erred in failing to accept the sponsors then present work as admissible to satisfy the requirements of the EEA Regulations. In particular, it had failed to have regard to documentary evidence which demonstrated that sponsor's employment after the date of the appellant's application or the decision of the respondent appealed against.
5. Mr Akindale for the appellant submitted further documentary evidence to us which purported to demonstrate that the sponsor had been in employment. In particular payslips in the name of the sponsor, apparently issued by So Clean were produced which appeared to show payments made to the sponsor from 1 April to 16 September 2015 and which show fortnightly payments of £91.80. Those payments are supported by bank statements in the name of the sponsor showing payments appearing a few days after the date of the payslip in the same amount.
6. Miss Fijiwala for the respondent did not object to this material being produced to us at this stage. She confined herself to pointing out that in respect of a payment of £254.30 appearing on the sponsors bank statement of 6 March 2015 there was no vouching for a payment of that amount from So Clean to the sponsor.
7. We are satisfied that the First-tier Tribunal materially erred in law in failing to have regard to documentary evidence which post-dated the date of the decision appealed against which was before that Tribunal. It is clear in our view that the unchallenged evidence was sufficient to establish that, at the date of the hearing before the First-tier Tribunal the sponsor was exercising Treaty Rights. We set aside the decision and remake it. We therefore are able to examine the material provided to us during this appeal in the absence of objection by the respondent or any application for the matter to defer for the respondent to check the provenance of the documents provided.

8. Having examined the documents offered, together with the documents already produced, we are satisfied on balance, that the appellant has demonstrated that the sponsor was in employment for the period up to 16 September 2015 and, accordingly, that she is exercising her treaty rights and is employed by So Clean under a contract of employment dated 3 September 2014. We therefore allow this appeal under the EEA Regulation.
9. No anonymity direction is made.

Notice of Decision

The appeal is allowed under the EEA Regulations.

No anonymity direction is made.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal