



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

Appeal Number: IA/29315/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 December 2014**

**Determination
Promulgated
On 9 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**UZOMA BRIGHT NWAIWU
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Ikegwuruka of Almond Legals

For the Respondent: Miss A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Hillis) who in a Determination and Reasons on the papers, promulgated on 23 September 2014, dismissed the appeal against the

Secretary of State's decision refusing to issue a residence card as confirmation of a right of residence in the UK.

2. The appellant whose date of birth is 5 December 1975 and he is a citizen of Nigeria.
3. The Secretary of State refused the application on the grounds that the appellant failed to show that he qualified either as a spouse or as an extended family member and that the sponsor was exercising treaty rights. In a Decision and Reasons the Tribunal considered the application of Regulation 8 as it was conceded that Regulation 7 could not be met. The documentary evidence is referred to at paragraph 15 in the determination.
4. The Tribunal found that the tenancy agreement was unreliable evidence and that the Thames Water Bills to be in separate names of the appellant and his wife. The documentary evidence was overall insufficient as stated at paragraph 19. At paragraph 21 the Tribunal considered the evidence of the exercise of treaty rights and found the same to be insufficient to show that the sponsor was working in the UK.

Grounds

5. The grounds of application assert that the Tribunal erred in finding that there was no tenancy agreement when in fact there was one and further erred in finding that the utility bills were in the sole name of Miss Sita Toumba-Selima when in fact it was in the name of the appellant and thirdly, that it was wrong to expect that there should be evidence of service of documents on the respondent.
6. Permission was granted by Judge Dehaney on 10 November 2014 on all grounds.
7. This morning I have heard submissions from both representatives, Mr Ikegwuruka relied on the grounds of appeal and conceded that there was no point to be taken with regard to the documentary evidence as the Tribunal clearly had all of the documents that were submitted and included in the respondent's bundle. There was no other documentary evidence relied on that was excluded. He argued, however, that the Tribunal had failed to take into account the evidence of the tenancy agreement and that the Tribunal was wrong as regards the names on the utility bills.
8. Miss Holmes relied on the Rule 24 response and further argued that the findings with regard to the exercise of EEA Treaty rights remained unchallenged.

Decision

9. I am satisfied that the errors complained of do not materially affect the Tribunal's consideration of the evidence nor its conclusions. The Respondent had not in fact considered Regulation 8 in the refusal letter as the decision focused on the failure to meet Regulations 6 and 7. There was documentary evidence before the Tribunal relevant to Regulation 8 which was relied on in the Appellant's grounds of appeal before the First-tier Tribunal.
10. I take the view that the Decision may have been lacking in clarity in parts but overall I find that the Tribunal engaged with the evidence and made findings that were properly open to it to make. The Tribunal considered the applicability of Regulations 6 and 8 EEA Regs. The Tribunal although stating that there was no tenancy agreement then went on to find that was evidence of the tenancy agreement but found it to be unreliable. The evidence as to the utility bills was considered at [17] and found to be insufficient evidence of a durable relationship [19]. There is nothing in the Appellant's arguments that show any error of law.
11. It is unclear whether at [20] the Tribunal is referring to additional documentary evidence or that considered. The evidence relied on is included in the Respondent's bundle for the hearing. I am satisfied that the Tribunal did consider all of the documents before it and none was excluded. The Tribunal made clear findings at paragraph 19. This ground was not pursued at the hearing.
11. In any event no issue taken with the Tribunal's finding that the Sponsor/EEA member was not exercising her Treaty rights. This was neither challenged by the Appellant at the hearing before me nor raised in any grounds of appeal. The finding that the Appellant failed to meet Regulation 6 stands.
12. I find no material error of law and the Decision shall stand.

Signed

Date 5.1.2015

Deputy Upper Tribunal Judge G A Black

No anonymity order
No fee award as the appeal is dismissed.

Signed

Date 5.1.2015

Deputy Upper Tribunal Judge G A Black