



IAC-AH-SAR-V1

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

Appeal Number: IA/42531/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 9th September 2015**

**Decision & Reasons Promulgated
On 23rd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**WAJAHAT ZAHEER
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Qureshi of Fawad Law Associates

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Kempton promulgated on 16th February 2015.
2. The Appellant is a male citizen of Pakistan born 13th December 1988 who applied on 6th August 2014 for a residence card as the spouse of an EEA national.

3. The application was made on the basis that the Appellant married Laura Gontyte, a Lithuanian national, on 29th July 2014. It was contended that the Appellant's spouse, to whom I shall refer as the Sponsor, was exercising treaty rights in this country.
4. The application was refused on 10th October 2014. The Respondent did not accept that the Sponsor was exercising treaty rights as a worker, and therefore did not accept that she was a qualified person as defined in regulation 6 of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). The Respondent took this decision because it had not been possible to contact the company named by the Sponsor as her employer. Efforts had been made to telephone the company, without success.
5. The Appellant appealed contending that the Sponsor had never claimed to be working for Premier Knitwear (UK) Limited which was the company referred to in the Respondent's reasons for refusal letter. It was explained that the Sponsor's previous employment ended on 20th June 2014, and she subsequently received a job offer from Premier Knitwear (UK) Limited, but on 5th September 2014 the Sponsor commenced employment with D J & C Feeds Limited and a copy of her contract of employment had been submitted to the Respondent on 2nd October 2014.
6. Therefore it was contended that the Sponsor was in employment, and was a qualified person as defined in regulation 6 of the 2006 Regulations.
7. Judge Kempton decided the appeal on the papers as requested by the Appellant. The judge found that the Sponsor had commenced work with a new employer, which employer was not known to the Respondent at the time of application and therefore the correct course of action would be for the Appellant to make a fresh application for a residence card. The judge dismissed the appeal because at the date of application there was no evidence of employment and although the Sponsor did seem to have been employed by D J & C Foods Limited from 5th September 2014, this was after the date of application which was 6th August 2014, and so this employment could not be taken into account for the purposes of the appeal.
8. The Appellant applied for permission to appeal to the Upper Tribunal. In summary, it was submitted that the judge had erred by failing to take into account evidence that was available at the date of hearing. The judge should not have restricted consideration to evidence which was available at the date of application.
9. Permission to appeal was granted by Judge of the First-tier Tribunal Simpson who found it arguable that the judge had erred in law as an appeal relating to a residence card should have been decided on the evidence available at the date of hearing.

10. Following the grant of permission, the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 accepting that the relevant date was the date of hearing, not the date of application. The judge had in fact accepted that the Sponsor was a qualified person under regulation 6 at the date of hearing, and therefore the Respondent accepted that there was a material error of law, and did not oppose the application for permission to appeal, and invited the Upper Tribunal to allow the appeal.
11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

12. Mr McVeety stated that he agreed with the rule 24 response. It was accepted that the judge had materially erred as contended in the grounds, and it was accepted that the decision of the First-tier Tribunal should be set aside.
13. I set aside the decision of the First-tier Tribunal and indicated that I intended to re-make the decision. Mr McVeety stated that it was now accepted that the Sponsor is a qualified person as defined by regulation 6, and therefore the appeal should be allowed. In those circumstances I did not need to hear from Mr Qureshi.
14. I indicated that the decision of the First-tier Tribunal was set aside, and the appeal was allowed and I would issue a written decision.

My Conclusions and Reasons

15. The judge erred in law as contended in the grounds contained within the application for permission to appeal. The judge was wrong to conclude that only evidence available at the date of application could be taken into account. The judge was obliged to take into account evidence available at the date of hearing and should have done so. For that reason the decision of the First-tier Tribunal was set aside.
16. It is accepted that the Sponsor had provided evidence that she was in employment at the date of the First-tier Tribunal hearing. The Respondent has conceded this to be the case. The only issue in this appeal was whether or not the Sponsor was exercising treaty rights as a worker, and because evidence was submitted to prove that she was, the appeal was allowed.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision. The appeal is allowed as the requirements of the 2006 Regulations are satisfied.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date 15th September 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

As the appeal has been allowed, I have considered whether to make a fee award. I do not consider it appropriate as in my view the evidence of the Sponsor's employment was not before the initial decision maker. There is no fee award.

Signed

Date 15th September 2015

Deputy Upper Tribunal Judge M A Hall