



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48249/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18 March 2015

Decision Promulgated
On 30 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between
NIKOLIN ZEFI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Mr Shilliday Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Lal promulgated on 11 November 2014 which allowed the Appellant's appeal against

a refusal of a permanent residence card under the Immigration(EEA) Regulations 2006.

Background

3. The Appellant was born on 16 February 1975 and is a national of Albania.
4. The Appellant entered the United Kingdom on 19 January 2006 as the family member of an EEA national Vilija Zefi his spouse. He applied for a Residence card and this was issued 4 March 2008 and expired on 4 March 2013.
5. On 31 January 2013 the Appellant applied for permanent residence.
6. On 28 September 2013 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The Appellant asserted in his application that his wife had exercised Treaty Rights in the United Kingdom for a continuous period of 5 years. The Appellant evidenced two periods of employment for his wife with the Camden Contact lens Centre from December 2008 to November 2009 and Sainsbury's from August 2011 to the date of application. The Appellant asserted that his wife was a job seeker in between these period of employment.
 - (b) The Appellant's Sponsor was unemployed for periods in excess of 6 months and therefore by reference to Regulation 6(2)(b) was required to provide evidence that she was seeking employment in the United Kingdom and had a genuine chance of being employed and the fact that she was in receipt of JSA was not evidence that met this requirement.
 - (c) The Appellant had not produced evidence for a continuous period of 5 years as the evidence produced covered the period 30 November 2008 to 31 January 2013.
 - (d) The Appellant had failed to provide satisfactory evidence that he had resided in the UK for 5 years.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lal ("the Judge") allowed the appeal against the Respondent's decision in a decision that was very brief. The Judge found in essence:
 - (a) The Appellant and his wife gave credible evidence that a condition of the receipt of JSA was that she was actively seeking work and that the sponsor had been placed on a programme %E which gave an enhanced level of support for return to the workplace
 - (b) In relation to the Appellant having lived in the United Kingdom for 5 years the Judge heard evidence from the Appellant and his wife who gave consistent evidence as to the places they had lived during that period and the Judge

therefore accepted that the Appellant had lived in the United Kingdom for 5 years.

8. Grounds of appeal were lodged on the basis that the Judge had failed to make findings in relation to a material issue namely the period that the Appellant's sponsor was a jobseeker for the purposes of the EEA Regulations; that the Judge failed to take into account the requirement for the Appellant to show during periods of unemployment in excess of 6 months that she was actively seeking employment and had a genuine chance of finding it; that the Judge misdirected himself that receipt of JSA was evidence that the Appellant was seeking work and had a genuine chance of engagement.
9. On 5 January 2015 First-tier Tribunal Judge Frankish gave permission to appeal stating:

"Four short sentences at para 13 comprise the entire substance of the determination. Sentence two arguably amounts to the F-tTJ accepting that receipt of JSA equates to compliance with Regulation 6, which as the application alleges, is an arguable error of law."
10. At the hearing I heard submissions from Mr Shilliday on behalf of the Respondent that :
 - (a) He relied on the grounds of appeal.
 - (b) There had been a misdirection in relation to the standard of proof in that at paragraph 13 the Judge referred to there being highly credible evidence but in this case the Appellant was in the United Kingdom and could have provided documentary evidence
11. Mr Zefi did not wish to say anything other than his wife was actively seeking work when in receipt of JSA and he had brought his wife's Jobcentre 'Looking for Work' record as evidence of that.

Legal Framework

12. The provisions of the 2006 EEA Regulations that were in issue in this case were Regulation 15(1)(b) which provides that family member of an EEA National but who is not himself an EEA but who has resided in the United Kingdom with the EEA National in accordance with the Regulations for a continuous period of 5 years .The correct version of Regulation 6(2) (b) is set out below and is not as recited in the refusal letter and provided:

“(2) ...A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

(a)..

(b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and—

(i) he was employed for one year or more before becoming unemployed;

(ii) he has been unemployed for no more than six months; or

(iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;”

The Law

13. In relation to sufficiency of reasons I have considered Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) where in headnote it is stated (1): *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”*

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
15. Mr Shilliday opened his arguments by suggesting that the Judge had applied the wrong standard of proof because he expressed the view that the parties gave very credible evidence. This was not, I note one of the grounds of appeal and nor was any application made to amend the grounds. I refuse at this late stage to amend the grounds of appeal. Moreover even had I allowed the amendment I would have noted that the Judge sets out the correct burden and standard of proof at paragraph 6 of the decision. I do not accept that because he has found the evidence of the witnesses to be ‘very credible’ that this in some way suggests he has misunderstood the standard of proof to apply.
16. The first ground on which permission was granted was that the Judge failed to make a finding on a material issue namely the period during which the EEA national spouse was a jobseeker for the purposes of the Regulations. The Judge at paragraph 5 summarises the issues in the case arising out of the refusal letter and that included identifying the periods during which the EEA sponsor was a job seeker. The Judge referred to two periods of unemployment: 9/9/2009-4/2010 and 5/2010-8/2010 and the fact that the Appellant submitted in support of his application a letter from the Jobcentre which were in the Respondent’s bundle confirming these two periods as a jobseeker. The Judges summary of the periods was in fact factually inaccurate as the refusal letter refers to a third lengthy period of unemployment from 18/5/2010-14/8/2011. However I am satisfied that this factual error made no material difference to the outcome of the case because again this third period was confirmed in a letter from the Jobcentre dated 6 June 2012.
17. I am satisfied that given the Judge set out the evidence of the Jobcentre letters and there did not appear to have been any challenge raised by the HOPO to this as evidence of the period during which the sponsor was a jobseeker it was open to the Judge to proceed on the basis that this was unchallenged evidence against which he assessed the appeal.
18. The second and third ground essentially argues that the Judge was not entitled to conclude that the fact that the sponsor was in receipt of JSA during the periods of unemployment was evidence that she was actively seeking employment and had a

genuine chance of being engaged. The Judge heard oral evidence from both the Appellant and his wife and found at paragraph 13 that the evidence was highly credible. The Judge found that being on JSA 'one would have to show that one was actively seeking work' and indeed this was a finding that was open to the Judge given that it is a provision of the Jobseekers Act 1995 that one of the entitlement conditions for the receipt of JSA is that an applicant was actively seeking employment.

19. The Judge was also required to consider whether the Appellant had a genuine chance of employment. While the Judge did not specifically identify this second component of the requirements of Regulation 6 he does refer to the fact that the sponsor was placed on the 5E programme which was designed for CV improvement and interview technique and the Judge found this to be an additional level of support that led to her obtaining her job with Sainsburys. In those circumstances I am satisfied that the failure to clearly identify this other requirement made no material difference to the outcome of the decision as faced with her enhanced level of support and the fact that she found employment in the field in which she sought it, it would have been open to the Judge to conclude that she had a genuine chance of employment.
20. I find that the reasons given were certainly very brief but I find that such errors as there were made no material outcome to the decision.

CONCLUSION

21. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

22. **The appeal is dismissed.**

Signed

Date 29.3.2015

Deputy Upper Tribunal Judge Birrell