



**Upper Tribunal
(Immigration and Asylum Chamber)**
EA117812016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Liverpool
On 28th April 2017**

**Decision Promulgated
On 01st June 2017**

Before

Deputy Upper Tribunal Judge Chapman

Between

**Mr Luqman Olayinka ALLI
(No anonymity order made)**

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C. Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria, born on 25 May 1982. On 30 March 2016 he applied for permanent residence on the basis of his marriage to Agnieszka Zurek, a national of Poland, born on 7 June 1978, on the basis that he had been residing with his wife who had been exercising treaty rights in the United Kingdom for a continuous period of 5 years. This application was refused on 16 September

2016 on the basis that the Respondent was not satisfied on the basis of the documentation submitted that there was sufficient evidence to establish that the Sponsor had been exercising treaty rights continuously in the United Kingdom for 5 years.

2. The Appellant appealed against this decision and the appeal came before First tier Tribunal Judge Cohen for a decision on the papers on 10 November 2016. In a decision promulgated on 21 November 2016, the Judge dismissed the appeal on the basis that, whilst the Appellant had submitted additional evidence in support of the appeal, the payslips from US Airways for the period of 31 January 2011 to 31 January 2012 were for Mr A Zurek whereas the Sponsor is female and the payslips are not consecutive, thus he attached little weight to them [9]. Whilst the Judge was satisfied that the Sponsor was employed by Cresta World Travel from 5 November 2012 to 29 May 2015, this was an insufficient period to cover the five year period required under the Regulations [9].

3. The Appellant sought permission to appeal to the Upper Tribunal in time on the basis *inter alia* that the appeal was lodged with payslips covering the entirety of the five year qualifying period; whilst the US Airways payslips referred to his wife as Mr instead of Mrs, he had obtained written confirmation from US Airways (now trading as American Airlines) specifying his wife's length of service and that she had been in continuous employment for that period.

4. In a decision dated 8 March 2017, Upper Tribunal Judge Kopieczek granted permission to appeal on the basis that he considered there is arguable merit that the First tier Tribunal Judge did not give legally adequate consideration to the documentary evidence provided in support of the contention that the Appellant's spouse had been exercising Treaty rights through employment for a continuous period of 5 years.

Hearing

5. At the hearing before me, the Appellant appeared in person, accompanied by his wife. He submitted in support of the contention that the Judge had made a material error of law that they had submitted about 60 payslips and that these had never been in issue for the Home Office. He stated that they had obtained the US Airways letter the day after receipt of the decision of the First tier Tribunal Judge.

6. Mr Bates submitted that the Judge was entitled to come to the conclusion he did given and the further evidence could be put forward by way of a fresh application. He also submitted that the relevant five year period was not entirely clear and if it was from May 2015 backwards this would go beyond 1 May 2011 and thus the

Sponsor, as a member of an Accession State would need to show that she had applied to the Home Office under the Worker Registration Scheme and that she had worked for 12 months in order to accrue rights as a qualified person.

7. Mr Alli drew attention to the fact that his wife and Sponsor had registered under the Worker Registration Scheme and her certificate was issued on 28 January 2011, in respect of her employment with US Airways which had commenced on 3 March 2008. He submitted that the evidence had been submitted in good faith and they did not notice the typographical error in relation to his wife's name on the US Airways pay slips.

8. I indicated to the parties that I was minded to find a material error of law in the decision of the First tier Tribunal Judge and invited the parties to make submissions on all the evidence now available. Mr Alli was content to rely on that evidence. Mr Bates accepted, having had sight of the originals, that there were consecutive payslips from January 2012 to November 2012; that the Judge had accepted those submitted from November 2012 until May 2015 and he accepted that there were payslips from June 2015 up to Jan 2017. In light of this evidence, Mr Bates accepted that the payslips were evidence of the exercise of treaty rights by the Sponsor for 5 years continuously.

Decision

9. I find that the First tier Tribunal Judge materially erred in law in dismissing the Appellant's appeal. At [9] the Judge placed no weight on the payslips from US Airways for the period 31 January 2011 to 31 January 2012 on the basis that the name on the payslips was Mr A Zurek rather than Mrs A Zurek and they are not consecutive. Contrary to the Judge's findings, I find that the error in respect of the Sponsor's title was simply typographical and that the payslips are consecutive. I have had regard to the evidence submitted with the appeal to the First tier Tribunal which comprises: (i) 13 payslips from US Airways from January 2011 to January 2012; (ii) 8 payslips from Carlson Wagonlit from January 2012 to August 2012; (iii) 3 payslips from Egencia from September 2012 to November 2012; (iv) 31 payslips from Cresta World Travel from November 2012 to May 2015; (v) 15 payslips from AllSeven24 from June 2015 to August 2016 and (vi) a letter from Cresta World Travel confirming employment of the Sponsor from November 2012 to May 2015. Whilst the First tier Tribunal Judge took account of (i) and (vi) there is no indication from his decision that he gave any proper consideration to the documents at (ii)-(v) but rather he found at [9] "*other documents likewise are intermittent and do not cover the totality of the period.*" This is an error because it is clear from the payslips that they are not intermittent and they do cover the

entirety of the period January 2012 to November 2012 and June 2015 to August 2016. This error is material given that had the Judge appreciated this he would have bound to find that the Sponsor had exercised treaty rights from January 2012 through to August 2016.

10. I have had regard to all the payslips submitted, which include up to date payslips from Allseven24 Limited June 2015 for the whole of 2016 and January to March 2017. I have also had regard to the letter from US Airways confirming the Sponsor's employment from March 2008 to January 2012. I therefore accept Mr Bates' helpful concession that there is before the Upper Tribunal evidence that the Sponsor was exercising treaty rights in the United Kingdom for five continuous years from 28 January 2011 (when she was registered with the Home Office under the Worker Registration Scheme).

11. I find that the requirements of regulation 15(1)(b) of the Immigration (EEA Regulations) 2006 were met at the date of decision of 16 September 2016, which was prior to the coming into force of the material aspects of the Immigration (EEA Regulations) 2016 on 1 February 2017. For the avoidance of doubt, I find that the Sponsor is continuing to exercise treaty rights as is evidenced by the up to date payslips and thus the Appellant would also qualify for permanent residence under the provisions of the current Regulations now in force.

12. I find a material error of law in the decision of First tier Tribunal Judge Cohen. I substitute a decision allowing the appeal by the Appellant.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

31 May 2017