



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

Appeal Number: IA/01162/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 24 October 2014**

**Decision & Reasons Promulgated  
On 23 December 2014**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR OMAR GAYE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Duheric, Solicitor

For the Respondent: Mr M Matthews, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Blair dismissing this appeal under the Immigration (European Economic Area) Regulations 2006 (“the EEA Regulations”).
- 2) The appellant is a national of the Gambia. His wife, Kumba Jallow, is a Danish national. The appeal was brought against a decision dated 8 December 2013 by the respondent refusing the appellant a residence card as the family member of an EEA national. This was because the family

member, namely the appellant's wife, had failed to provide evidence that she was a qualified person in terms of regulation 6 of the EEA Regulation. The appellant claimed that his wife qualified under regulation 6 either as a jobseeker or as a person who had retained the status of a worker in involuntary unemployment.

- 3) The Judge of the First-tier Tribunal considered what requirements had to be satisfied in order to retain the status of a worker in involuntary unemployment in terms of regulation 6(2)(b). The judge was not satisfied that the appellant's wife met these requirements and accordingly dismissed the appeal.
- 4) The application for permission to appeal argued that the judge misinterpreted the requirements in regulation 6(2)(b) and that on the evidence the appellant's wife met the relevant requirements. In granting permission to appeal, Judge of the First-tier Tribunal Landes pointed out that regulation 6 had been amended with effect from 1 January 2014 (subject to transitional provisions which are not relevant to this appeal) and the application of the amended regulation did not appear to have been considered.
- 5) Although the decision against which the appeal to the First-tier Tribunal was brought was dated 8 December 2013, the appeal was heard on 27 February 2014. The relevant amendments to regulation 6 were made by the Immigration (European Economic Area) (Amendment) (No 2) Regulations 2013/3032. Regulation 6 now reads as follows:

- “(1) In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as-
- (a) a jobseeker;
  - (b) a worker;
  - (c) a self-employed person;
  - (d) a self-sufficient person; or
  - (e) a student.
- (2) Subject to Regulations 7A(4) and 7B(4), 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) he is temporarily unable to work as a result of an illness or accident;
  - (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he -
    - (i) is registered as a job seeker with the relevant employment office; and
    - (ii) satisfies conditions A and B;
  - (ba) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided that he -
    - (i) has registered as a job seeker with the relevant employment office; and
    - (ii) satisfies conditions A and B;

- (c) he is involuntarily unemployed and has embarked on vocational training; or
  - (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.
- (2A) A person to whom paragraph (2)(ba) applies may only retain worker status for a maximum of 6 months.
- (3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.
- (4) For the purpose of paragraph (1)(a), a “jobseeker” is a person who satisfies conditions A and B.
- (5) Condition A is that the person -
- (a) entered the United Kingdom in order to seek employment; or
  - (b) is present in the United Kingdom seeking employment, immediately after enjoying the right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph 2(b) or (ba).
- (6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.
- (7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than 6 months unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.”
- 6) The Judge of the First-tier Tribunal made the following findings. The Appellant’s wife, Kumba Jallow, was working in the UK between June 2003 and August 2006. She then claimed Jobseekers Allowance from October 2006 to around February 2008. This was followed by a period of employment for one month from February to March 2008. She claimed Jobseeker’s Allowance again from June 2008 to September 2008 and was then employed for a further 4 months in the autumn of 2008 until January 2009. The evidence showed that up until 2006 she was employed for a continuous period but thereafter her employment history was patchy and she was not employed for at least a year before becoming unemployed again and claiming Jobseekers Allowance.
- 7) At the same time the judge had before him medical evidence which showed that Kumba Jallow suffers from anxiety and Kumba Jallow accepted in her evidence that this had impacted on her ability to find work.
- 8) At the hearing before us it was recognised that Kumba Jallow has been out of work for some time. Even if she could show that she had entered as a jobseeker in terms of Condition A, she would also have to satisfy Condition B and, moreover, in terms of Regulation 6(7) in order to retain the status of a worker or jobseeker for longer than 6 months she would have to provide compelling evidence that she was continuing to seek employment and had a genuine chance of being engaged. Mr Duheric acknowledged that the evidence to show these conditions were satisfied was not available. Accordingly, the appeal could not succeed.

- 9) In summary, our decision is that the Judge of the First-tier Tribunal erred in law by failing to consider the amendments to the EEA Regulations in force at the date of the hearing on 27 February 2014. We note that on that date the judge was without a Presenting Officer to advise him and he therefore relied on the respondent's case as presented in the refusal decision and accompanying reasons. Nevertheless, by not recognising the changes to the Regulations the judge erred in such a way that his decision is set aside.
- 10) In re-making the decision under the Regulations (as amended), according to the facts as found by the Judge of the First-tier Tribunal, it has not been shown that the appellant would satisfy the requirements either as a worker who has retained that status in involuntary unemployment or as a jobseeker. Accordingly the appeal must be dismissed.

### **Conclusions**

- 11) The making of the decision of First-tier Tribunal did involve the making of an error on a point of law.
- 12) We set aside the decision.
- 13) We re-make the decision in the appeal by dismissing it.

### **Anonymity**

- 14) The First-tier Tribunal made an order for anonymity to protect the privacy of the appellant's spouse because there was medical evidence relating to her. We continue this order (pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Signed

Date **23 December 2014**

Upper Tribunal Judge Deans