



IAC-FH-CK-V1

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

Appeal Numbers: IA/06557/2014
IA/06551/2014
IA/06562/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2014**

**Decision & Reasons
Promulgated
On 14 November 2014**

Before

**THE HONOURABLE MRS JUSTICE ANDREWS DBE
UPPER TRIBUNAL JUDGE DEANS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JOHN ANTHONY
MRS MARY HELEN JOHN ANTHONY
MISS CHRISTINA ANNA JOHN ANTHONY
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondents: Mrs A Hunewoth, Solicitor of Raj Law Solicitors

DECISION AND REASONS

1. This is an appeal from a determination made by the First-tier Tribunal (Judge Majid) and promulgated on 11 September 2014. To avoid confusion we shall refer to the appellant as “the Secretary of State” and to the

respondents to this appeal as “the appellants”. The appeal is brought by the Secretary of State with permission of a single Judge of the First-tier Tribunal (Judge Grimmett).

2. The Tribunal allowed the appeals by the three appellants against the Secretary of State’s decisions on 20 January 2014 to refuse to issue residence cards to them on the basis that the first appellant, Mr Anthony, is an EEA national (of Germany) exercising Treaty rights pursuant to the Immigration (European Economic Area) Regulations 2006 (as amended), (“the EEA Regulations”) and the remaining appellants, his wife and daughter, are his dependants.
3. The Secretary of State asserts that the First-tier Tribunal Judge erred in failing to give any, or any adequate reasons for the decision to allow the appeals. The grounds are set out extensively in the notice of appeal. Reliance is placed upon the guidance given in a judgment of Henry LJ quoted in the determination of the President in **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** at paragraph 8:

“More recently, in **Flannery v Halifax Estate Agencies [2000] 1 All ER 373**, one finds a comprehensive exposition of the duty imposed on today’s professional judge. The Court of Appeal observed, first (at page 377):

‘It is not a useful task to attempt to make absolute rules as to the requirement for the judge to give reasons. This is because issues are so infinitely various.

The following passages in the judgment of Lord Justice Henry are deserving of full reproduction:

‘(1) The duty [to give reasons] is a function of due process and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties - especially the losing party - should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know whether the court has misdirected itself and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not....’”

4. The Secretary of State also refers to a passage in **MK** at paragraph 12:

“The final word on this subject goes to Lord Neuberger:

‘Decisions without reasons are certainly not justice: indeed they are scarcely decisions at all.’

[The Bailii Annual Lecture, 20 November 2012]”.

5. The Secretary of State is not to be criticized for bringing this appeal. There were apparent deficiencies in the reasoning on the face of the determination. Moreover, Mr Whitwell, who presented the case for the Secretary of State before us today, explained that at the time when the grounds of appeal were settled (and indeed, until quite recently) the Secretary of State had no access to the bundle of documents that had been presented by the appellants to the First-tier Tribunal. Therefore there was no opportunity to see what evidence the Tribunal had relied upon, other than what appeared on the face of the determination, and that in and of itself was insufficient to enable the Secretary of State to work out why it was that the Tribunal had allowed the appeal.

6. The high water-mark of the Tribunal's reasoning appears in paragraphs 13 and 22 of the determination. In paragraph 13 the Tribunal refers to the submissions of Counsel for the appellant and states this:

“He drew my attention to various documents and said that there was documentary evidence illustrating that he [that is, the first appellant] was a ‘qualified worker’ and for the respondent to doubt that fact could not be beyond criticism given the fact that the documents presented to the respondent contained a P60 issued by the HMRC.”

7. There is then a reference to the oral evidence of the first appellant, which is related in great detail. In summary, his evidence was that he was working for a company called Haran Foods in Croydon, in which he owns shares. The address of that business, the telephone number and fax number were given, as were the contact details for the man who prepared the first appellant's wage slips.

8. After reciting various relevant provisions of the EEA Regulations the Tribunal then said this in paragraph 22:

“Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the appellant and the standard of proof is the balance of probabilities, I am persuaded that the appellants should benefit from the Immigration (European Economic Area) Regulations 2006 (as amended).”

That is all the reasoning that appears on the face of the determination.

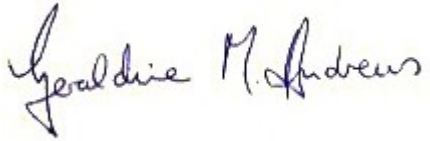
9. On behalf of the appellants, Mrs Hunneewoth submitted that paragraph 22 was sufficient. She submitted that the inexorable inference to be drawn from that paragraph was that the First-tier Tribunal had accepted all of the evidence, documentary and oral, that was placed before it in support of the appellants' case, and that it was satisfied that the first appellant was exercising his Treaty rights.

10. In our judgment that may be a generous interpretation of paragraph 22, but it is probably the correct one. However, even if we are wrong about that and there is an absence of reasons, it consists at most of the absence of a sentence saying “I accept as truthful the evidence of the first appellant, which is supported and corroborated by the documents in the bundle before me.”
11. Unlike the Secretary of State, we have had the advantage of seeing that bundle. It is clear that the documentation in it assists the first appellant in proving that he does indeed work for Haran Foods UK Ltd, which is a genuine business, and that he is exercising his Treaty rights as he claims. Those documents include the P60 which is expressly referred to in paragraph 13 of the determination, and the payslips, which appear to be perfectly normal payslips. There is also a photograph of the premises of Haran Foods, which is plainly in an industrial area and is not a residential address (as claimed in the decision letter rejecting the first appellant’s application).
12. All of the information in the P60 and payslips (which state the first appellant’s national insurance number and appear to be authentic) could have been checked by the Secretary of State with HM Revenue & Customs if there were any queries about it. As to the premises of Haran Foods, they plainly exist. It is not surprising that attempts to contact people there during the daytime might have failed because of the nature of the business. We expect that people who work there would be up and about early in the morning and then going about their business during the day. It looks like a fairly small enterprise, and therefore there is nothing sinister about an inability by the Home Office to contact people there if the attempts were made during the daytime.
13. So even if we had been minded to find that there was a material error of law in the determination and to set it aside on that ground, we would have re-made the decision and reached exactly the same conclusion. The first appellant’s evidence is credible and supported by the documentation he provided.
14. However, we are just about persuaded by Mrs Huneewoth that the inference that she submits can be drawn from paragraph 22 of the determination, read in conjunction with the preceding passages (including in particular paragraph 13). Therefore we will dismiss this appeal.

Notice of Decision

There was no material error of law in the determination as alleged. Therefore the appeal is dismissed.

No anonymity direction is made.

A handwritten signature in cursive script that reads "Geraldine M. Andrews".

Signed

Date 14th November 2014

Mrs Justice Andrews