



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/13605/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 17 February 2014

Determination promulgated
on 19 February 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ARINZE UZONWANNE AKUBELEM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

No anonymity order requested or made.

DETERMINATION AND REASONS

- 1) The appellant appeals against a determination by First-tier Tribunal Judge Burns, promulgated on 19 November 2013, dismissing his appeal against refusal of a residence card.
- 2) The respondent refused the appellant's application on 7 April 2013 under Regulation 6 of the Immigration (European Economic Area) Regulations 2006 because the appellant failed to show that his EEA family member (his mother-in-law, an Italian citizen) is economically active in the UK as a self-employed person.
- 3) The appellant categorises the errors of law in his grounds of appeal to the Upper Tribunal as failure to consider material evidence, taking into consideration irrelevant factors, and failing to give adequate reasons. In substance, his complaints are that the judge failed to see the nexus between evidence of his mother-in-law's registration as a trader on Amazon, and the records of Amazon transactions produced; and failed to give proper recognition to a letter from accountants, to evidence of payment of National Insurance contributions; and to evidence of

registration with HMRC. Mr Ndubuisi submitted that the determination should be set aside and that further evidence should be admitted for purposes of a fresh decision. It was not argued that further evidence was admissible to show error of law.

- 4) I was not persuaded that the conclusions reached by the judge are defective. The reasons given at paragraph 21 of the determination are to be read along with the submissions for the respondent recorded at paragraph 17 and 18, which the judge accepted. Although Mr Ndubuisi (whose firm were not the representatives in the First-tier Tribunal) strenuously insisted that the registration of the appellant's mother as a seller on Amazon at Item G of the respondent's bundle was linked to the record of transactions at page H1-H5, the only common documentary link is that all the pages were printed off on 4 September 2012. There was no evidence from the appellant's mother-in-law, written or oral. The judge found the "accountant's letter" dated 9 July 2012 in the appellant's bundle in the FtT an unimpressive document. He was entitled to do so, and he gave sensible reasons. It does not explain what professional qualifications the company has, and it reflects no more than information said to have been provided by the appellant's mother-in-law.
- 5) Mr Ndubuisi referred to the application form at 7.4 which requires provision of at least one of three documents - invoices/receipts; accountant's letter, and business bank statements. He submitted that the appellant had provided not one but all three, and his appeal should therefore have succeeded. That submission I think is misconceived. To provide an item of evidence of the nature required does not guarantee that the substance of the application will be held as proved. The evidence has to stand up to reasonable scrutiny. Mr Ndubuisi referred also to evidence that the sponsor has a PayPal account, but that in itself proves nothing.
- 6) I prefer the submission for the respondent that the appellant made a poorly supported application, and that the additional evidence presented in the First-tier Tribunal made his case little better. The judge was entitled to find that he had failed to discharge the burden of proof upon him. No error of law is disclosed.
- 7) I do accept the observation from Mr Ndubuisi that the judge may have gone rather far in describing the application as "a bogus construct". It was sufficient to find that the appellant failed to establish his case.
- 8) The appellant's remedy, as the Presenting Officer pointed out, if his sponsor's economic activity is genuinely as he claims, is to make a further, properly supported application.
- 9) The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal shall stand.



18 February 2014
Judge of the Upper Tribunal