



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25127/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House, London
On 3 December 2014**

**Determination
Promulgated
On 8 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

JAVID AHMADI

Appellant
and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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Representation:

For the Appellant: no appearance and no representation

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

DETERMINATION AND REASONS

1. The appellant, a national of Afghanistan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his

application for a Residence Card as confirmation of his right to reside in the UK with his EEA national partner under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations). First-tier Tribunal Judge Mathews dismissed the appeal and the appellant now appeals with permission to this Tribunal.

2. At the hearing of this matter in the Upper Tribunal there was no appearance by or on behalf of the appellant. The First-tier Tribunal Judge had determined the appeal on the papers, the appellant having elected for him to do so. The appellant had not nominated a representative and was notified of the hearing on 12 November 2014 at the address given in the application for permission to appeal. There was no reason before me as to why the appellant did not attend the hearing. I was satisfied that the appellant had been notified of the hearing and I considered that it was in the interests of justice to proceed with the hearing and I did so in accordance with Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).
3. The respondent refused to issue the residence card because she was not satisfied that the appellant had demonstrated that his partner was a qualified person under regulation 6, in particular that she was not a jobseeker within regulation 6 (2) (b) of the EEA Regulations.
4. It appears to be the appellant's case, although it is not very clear from the documents, that the appellant's partner was in receipt of Job Seekers Allowance (JSA) for at least part of the time during which she claims to have been employed. This may account for the respondent having considered the application on the basis that the appellant's partner was a 'jobseeker' rather than a 'worker'.
5. The appellant had submitted further evidence for the appeal. This included a letter dated 16 June 2014 from Choice Travel and Fashion stating that the appellant's partner had been employed there since June 2013, initially for 10 hours a week and more recently for 16 hours a week. There were also payslips from Choice Travel and Fashion from May and June 2014. The First-tier Tribunal Judge considered this evidence along with the evidence submitted with the application. The Judge considered the absence of a witness statement from the employer; the lack of evidence from HMRC; the lack of bank statements reflecting the partner's claimed income; the fact that the earlier payslips identify the appellant's partner as male; the lack of evidence as to the income referred to in the JSA documentation; the poor quality of the documents submitted; and the lack of evidence from the appellant's EEA national partner. The Judge considered the employer's letter and payslips in the context of these factors and did not accept that this evidence was sufficient to demonstrate that the appellant's partner is employed as claimed.
6. The grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in failing to take into account the documentary

evidence from the appellant's partner's employer and by failing to take into account the fact that the Home Office previously made a wrong decision in the appellant's case.

7. However the Judge did take the new evidence into account as well as the evidence already submitted. There was no evidence before the Judge as to any previous application so I do not see how that could have been considered. In any event the Judge was bound to consider only the appeal before him.
8. Mr Shilliday submitted that it was open to the Judge to decide that the documents submitted were not reliable in the circumstances and that his decision was not *Wednesbury* unreasonable. He also submitted that there is little prejudice to the appellant in making a fresh application with all of the appropriate documentation.
9. I am satisfied that the decision made by the Judge was open to him on the basis of the evidence before him. The situation in relation to JSA was unclear. The appellant had submitted some evidence of his partner's employment but the Judge was entitled to look at all the evidence in the round and to conclude that the evidence submitted was not reliable or sufficient to discharge the burden of proof upon the appellant.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Signed
December 2014

Date: 3

A Grimes
Deputy Judge of the Upper Tribunal

