



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

Appeal Number: IA/02181/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2014**

**Determination
Promulgated
On 2nd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS BEVERLEY MOYO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dinh (Solicitor)
For the Respondent: Mr P Nath (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R G Walters, promulgated on 25th September 2014, following a hearing at Taylor House on 20th August 2014. In the determination, the judge dismissed the appeal of Mrs Beverley Moyo. The Appellant subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Zimbabwe, who was born on 16th April 1974. She appealed against a decision of the Respondent dated 13th December 2013, refusing the Appellant's application for a residence card under Regulations 6 and 20(1) of the Immigration (EEA) Regulations 2006, the Respondent maintaining that the Appellant's EEA family member had failed to provide evidence that he is a qualified person as set out in Regulation 6 of the 2006 Regulations; and that furthermore, that the Appellant would pose a threat to the requirements of public policy, if allowed to remain in the United Kingdom.

The Appellant's Claim

3. The Appellant's claim is that she entered the UK in 2000 as a visitor and overstayed, was subsequently served with illegal entrant papers in 2003, and was eventually the subject of a court recommended deportation order in 2007. However, by the time of the hearing before Judge R G Walters, she was able to point to the fact that her EEA partner, Mr Abu Sule, was a qualified person exercising treaty rights, and that no grounds were shown for her exclusion on the basis of public policy.

The Judge's Findings

4. The judge had before him, on the day of the hearing, a supplementary bundle from the Appellant's side, which the judge ruled as being inadmissible, because this bundle (referred to as "A.2"), had not been filed in accordance with directions (see paragraph 21). The judge ruled that this was important because the Respondent should have been given the opportunity to "check its veracity." The judge explained that,

"If A.2 had been served, for example, five days prior to the hearing or even at some time after he got his job (the evidence shows this was on 2nd May 2014), the Respondent would have had an opportunity to check its veracity. No explanation was advanced why the evidence had not been served until the date of hearing" (see paragraph 22).

With the evidence excluded by the judge, it was held that there was no evidence to show that the Appellant's partner, Mr Abu Sule, was a qualified person, exercising treaty rights. The judge, having made this decision, did not then go on to decide whether the Appellant's exclusion would be proper in the grounds of public policy under Regulation 21(6), as explained in paragraph 29 of the determination.

Grounds of Application

5. The grounds of application state that the judge's consideration of the evidence was flawed and this infected his overall decision.

6. On 14th November 2014, permission to appeal was granted on the basis that it was arguable that the judge's limited consideration of what the Appellant must demonstrate in order to show that he has been exercising treaty rights, and failed to take into account the other evidence which had been provided, including the fact that he had been registered as unemployed, and had provided evidence of his activities with regard to seeking employment, "showed an error of law."

Submissions

7. At the hearing before me on 17th December 2014, Mr Dinh, appearing on behalf of the Appellant, (as he did before the Tribunal below), submitted that there were two issues here.
8. First, whether the EEA national in question was a "qualified person" exercising treaty rights; and (2) whether Regulation 21(6) of the EEA Regulations applied for an exclusion on public interest grounds. Mr Dinh submitted that he could confirm that documents were handed to both the Presenting Officer and the Tribunal on the morning of the hearing. The Tribunal knew that the Appellant was relying upon the bundle of A.2. If these documents were not to be admitted, the judge should have put the Appellant's solicitor, Mr Dinh, on notice, so that submissions could be made on an alternative basis. They were not put on notice, and as a result the consideration of the evidence was flawed.
9. Second, and in any event, the EEA national, Mr Abu Sule, was a "job seeker" at the time of the application, and therefore qualified under the Treaty of Rome in any event, and yet the judge did not address this issue.
10. Third, there was a letter from Vicarage Farm (see page 55 of the Appellant's original admissible bundle) confirming the EEA national's employment, as well as a pay rise to be given to him. The judge overlooked this completely. The judge focused on the subsequent new documents but neglected to refer to the bundle that had been admissible.
11. Fourth, there was the question of whether the Appellant could be excluded because she posed a threat to the requirements of public policy, but the judge did not reach a decision on this question (see paragraph 29), and this was necessary because the judge's view was that the decision to refuse the residence card on these grounds "is not in accordance with the law because the Respondent has failed to consider the factors set out in Regulation 21(6)," but avoided having to determine this question (see paragraph 29).
12. Finally, it was incumbent on the judge to consider the proportionality of the decision under Regulation 21(5)(8) which raised the issue of proportionality within the EEA Regulations themselves (without it being necessary to look at Article 8 for the purposes of establishing the proportionality of the decision).

13. For his part, Mr Nath submitted that the documents tendered by the Appellant were late, and no explanation was given for them and it was entirely right for the judge to say that the Secretary of State needed time to check on the veracity of these documents. If there was a letter from Vicarage Farms confirming that a person in question had been employed, it was important to check whether this was a fabricated letter or was genuine. On the other hand, he would have to accept that the issue of deportation of the Appellant was properly raised in the skeleton argument (see paragraph 30 of the judge's determination), even though the judge took a contrary view, because the refusal letter of 13th December 2013, being the latest refusal letter in this case, does refer to the Appellant's deportation on conducive grounds.
14. In reply, Mr Dinh submitted that the scale of the errors here was such that the only proper course of action was to make a finding of an error of law and to remit the matter back to a fresh First-tier Tribunal. This was for two reasons. First, the EEA national had been in employment and was currently a "job seeker" and this was confirmed in his receipt of job seeker's allowance; and second, a letter from Vicarage Farm confirmed that the EEA national had previously been employed. All of this evidence was in the admissible bundle. The judge focused too much on the latest bundle and appears to have overlooked the first bundle. There has been an absence of a fair hearing.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside this decision. My reasons are that there was obviously evidence before the judge (see page 55 of the original admissible bundle) confirming that the EEA national had been exercising his treaty rights and was therefore a "qualified person." This evidence was overlooked because the judge's attention focused too much on the latest bundle of A.2. Second, the Appellant's deportation on conducive grounds was a live issue before the judge and it was accordingly important for the judge to make findings on whether the Appellant posed a threat to the requirements of public policy such that a removal was in order. Given the nature of the omissions in this case, leading to the finding of an error of law that I have made, it is important that this matter is remitted back to another judge in the First-tier Tribunal, other than Judge R G Walters, to be determined *de novo* under Practice Statement 7.2.

Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remit this matter under Practice Statement 7.2 to a judge other than Judge R G Walters in the First-tier Tribunal to be heard *de novo*. This appeal is allowed to that extent.

17. No anonymity order is made.

Signed

Deputy Upper Tribunal Judge Juss
December 2014

Date 31