



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15628/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 16th December 2014

Decision & Reasons Promulgated
On 9th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR GULAM MOHMED ADAM HASHAN PATEL
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Patel

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 13th January 1986. The Appellant had previously entered the United Kingdom on a working holiday visa on 27th January 2008 and then left on 12th November 2009. He re-entered the United Kingdom on 4th

July 2013 and was granted a family visit visa which expired on 11th December 2013. Prior to the expiry of his visit visa the Appellant lodged an application for a residence card as the spouse of an EEA national on 28th October 2013.

2. On 19th March 2014 the Appellant was served with notice of refusal. That notice of refusal acknowledged that the Appellant had married a Csilla Jovanovics, a Hungarian national on 14th October 2013. Notice of refusal was issued on the basis that the Secretary of State considered that the timing of the Appellant's marriage as well as the fact that he provided no evidence to demonstrate he even knew his Sponsor prior to the marriage, raised concerns regarding whether the marriage or relationship was genuine.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Simpson sitting at Manchester on 16th June 2014. In a determination promulgated on 15th September 2014 the Appellant's appeal was allowed under the Immigration Rules. The Secretary of State on 12th September 2014 lodged Grounds of Appeal to the Upper Tribunal. The Grounds of Appeal noted that the judge had stated that she was not satisfied that the EEA national was employed but did find that the EEA national was a student and therefore a qualified person. It was submitted that the judge had erred in this finding because in cross-examination the EEA national had stated that she did not have health insurance and therefore could not be considered as a qualified person because she did not meet the requirement of Regulation 4(d)(2) of the 2006 EEA Regulations namely that she has comprehensive sickness cover in the United Kingdom.
4. On 21st October 2014 Judge of the First-tier Tribunal Froom granted permission to appeal on that ground. There is no Rule 24 response from the Appellant.
5. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor Mr Patel. Mr Patel is familiar with this matter. He attended before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety. I note that this is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process the Secretary of State is referred to herein as the Respondent and Mr Patel as the Appellant.

Submissions/Discussions

6. Mr Patel accepts that there is an error of law in the determination in that at paragraph 15 of the determination as there is no reference therein to the Sponsor's medical insurance. However he submits that the case involved an EEA national who was employed and undertaking an ESOL course. He points out that the Sponsor passed the course and that there is a clear record of the Sponsor's employment history and therefore she did not need medical insurance because of the amount of money that she was earning. Mr McVeety acknowledges the position and does not seek to challenge it.

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

9. The effect of the concessions made by Mr Patel on the Appellant's behalf and the agreement of Mr McVeety show that there was a material error of law in the decision of the First-tier Tribunal but that ultimately the decision was the correct one albeit that it could be considered that it should be for different reasons. I consequently set aside the decision of the First-tier Tribunal Judge and for the sake of correctness remake the decision allowing the appeal. I find that the Sponsor is not a student but an employee and that there is evidence that she is earning £700 a month from her employers Frenchbourne and documentary evidence is provided from HM Revenue & Customs confirming information relating to her payment history.
10. The documentary evidence which is made available shows firstly that the Sponsor has been in employment since 9th September 2013 and that she has been exercising her treaty rights throughout that period. The evidence produce includes her payslips, confirmation of employment from her employer, P60 and bank statement showing her salary credits. In addition evidence is provided of private health cover. Under the 2006 Regulations the Sponsor only has to be working at the date the application is considered. In all circumstances this was an Appellant therefore who met the requirements of the 2006 Regulations. I consequently remake the decision allowing the appeal.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law. Whilst that decision is set aside the decision is remade still allowing the appeal for the reasons set out above under the Immigration (European Economic Area) Regulations 2006.

No anonymity direction is made.

Signed

Date 04/03/2015

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made to vary the fee award and none is made.

Signed

Date 04/03/2015

Deputy Upper Tribunal Judge D N Harris