



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/04963/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 11 September 2017

On 04 October 2017

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**VLADIMIR BOROVSKY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Stevens, Counsel instructed by Fadiga & Co
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who was born on 29 July 1980, is a national of Slovakia who appealed against a decision of the respondent dated 8 March 2017 to remove him from the United Kingdom under Regulation 26(6)(c) of the EEA Regulations on the ground that he had been misusing his rights. The basis of the decision was the respondent's belief that he had not been exercising treaty rights in this country.
2. The appellant appealed against this decision and his appeal was heard by First-tier Tribunal Judge M A Khan, sitting at Harmondsworth on 15 June 2017.

3. In a decision promulgated on 30 June 2017, Judge Khan dismissed the appellant's appeal, finding that he had not been exercising treaty rights in recent years. At paragraph 27, giving the reason for this finding, Judge Khan found as follows:

"There is no evidence that he has been exercising treaty rights in recent years or that he has qualified for a permanent residence in accordance with the EEA Regulations".

4. It is stated within the grounds of appeal at paragraph 2 that the appellant had in fact been working from May 2011 until May 2016 and thereafter until November. He had been receiving jobseekers allowance. Of crucial relevance as set out at paragraph 4 of the grounds of appeal is that the appellant had provided no less than 122 payslips as evidence of his employment in the United Kingdom.
5. On behalf of the respondent, Mr Kotas accepted that a number of payslips and letters from the appellant's employers had been in the appellant's bundle and had accordingly been before the judge and so the judge's statement that there was no evidence that the appellant had been exercising treaty rights in recent years was unsustainable. It was accepted on behalf of the respondent that this was a material error of law and I agree.
6. Both parties invite this Tribunal to remit this appeal back to the First-tier Tribunal for re-hearing and I agree also that this is the appropriate course to take, as the appellant has not had his appeal properly considered. In these circumstances I will direct that the appeal be sent back to the First-tier Tribunal sitting at Hatton Cross to be re-heard by any judge other than Judge Khan, and that no findings will be retained.

Decision

The decision of First-tier Tribunal Judge Khan is set aside for material error of law and the appeal will be remitted to the First-tier Tribunal, sitting at Hatton Cross, to be re-heard by any judge other than First-tier Tribunal Judge Khan. No findings will be preserved.

No anonymity direction is made.

Signed:

A handwritten signature in blue ink that reads "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the letter 'g'.

Upper Tribunal Judge Craig
September 2017

Date: 29