



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01550/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 June 2018

Decision & Reasons Promulgated
On 20 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR GAMAL FATHY MOHAMED ABOUOMAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Nadeem, Legal Representative, M J Immigration
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Egypt, born on 6 March 1985, who appealed to the First-tier Tribunal against a decision of the respondent to refuse a residence card as the spouse of an EEA national. In a decision promulgated on 27 November 2017, Judge of the First-tier Tribunal Graham dismissed the appellant's appeal.
2. The appellant appeals with permission on the grounds that it was arguable that the judge erred in rejecting the documents as unreliable, at paragraph [14] of the decision and reasons, because they are photocopies without asking for the originals, which were available in court; and that it was procedurally unfair to reject the documents at

paragraph [14] for reasons which were not put in the refusal letter or put to the appellant and sponsor in court.

3. The respondent, in his Rule 24 response, submitted that the judge did not solely dismiss the documents relied on due to them being photocopies and asserted that the judge gave clear and detailed reasons at paragraph [14] for not accepting the documents. The judge also found that the appellant was not a credible witness at paragraph [15].

Error of Law Discussion

4. Mr Nadeem submitted that the originals of the copy documents were available in court and it was unfair to reject these without requesting those originals. He was unable to say, however, why these documents were not produced without such a request, other than to state that there was “no dispute made about these documents”. Mr Nadeem submitted that the appellant and sponsor had also not been cross-examined in relation to the judge’s concerns about the new documents produced for the hearing and he submitted that these documents were of “serious gravitas”.
5. The respondent in the refusal letter, dated 26 January 2017 raised a number of issues having studied the documents submitted and having ‘made our own investigations. In light identified inconsistencies the respondent was not satisfied that the evidence produced for Delta Services Limited and First Global Services Limited related to genuine employment of the sponsor. It was therefore evident that it was not accepted by the respondent that the appellant had produced evidence which could be relied on in relation to the sponsor’s employment. The appellant, who was legally represented, would have been aware therefore that the documents (and such would include any new documents produced) and the potential reliability of such documents, were at issue.
6. Although Mr Nadeem submitted that the judge’s findings were made purely on the basis of the new documents produced, that is not the case. The judge at [12] listed the evidence before the Tribunal in both the respondent’s and appellant’s bundle. At [13] the judge considered the reliability of ‘these documents’ in the round and then made a number of comments including in relation to documents in the respondent’s bundle. The judge specifically identified that “the appellant has not addressed these matters which were raised in the refusal letter”.
7. Ms Isherwood submitted that any errors made were not material and that there was no evidence in relation to what was cross-examined at the hearing and no statement or Record of Proceedings provided in support of the error of law hearing. Although I note that the judge, at [9] and [10] stated that he heard the following evidence and there was no specific record of any cross-examination in relation to the documents, I agree with Ms Isherwood that if the appellant sought to challenge alleged procedural irregularities further information, for example witness statements and/or a request for the Record of Proceedings, might have been provided.
8. I accept that the judge’s records at [9] and [10] does not purport to be a verbatim record. Having reviewed the Record of Proceedings, I further note that the record in the

Decision and Reasons is very much a summary and that there were further questions noted, including in relation to payslips and the fact that the payslips did not show that the hours varied and the dates that the payslips related to.

9. I take into consideration that the judge at paragraph [4(i)] recited the refusal letter before setting out a summary of the oral evidence at paragraphs [9] and [10] and going on to make findings commencing at paragraph [11]. The appellant has not challenged or addressed the judge's findings, including at [13], in relation to the appellant's failure to adequately address the respondent's concerns about the appellant's claimed employment and the documents provided with the application. Those findings were fully available to the judge.
10. With respect to the appellant's argument on the copy documents, although the appellant states that the original documents were available at the hearing there was nothing to support such a claim and I note that the copy documents faxed to the Tribunal on 30 October for the hearing on 1 November apologised for the late submission of the bundle but make no reference, for example, to the originals being available in court. The burden of proof was with the appellant and it was for the appellant to produce the originals if such were available. There was no material error in the judge taking into consideration, in the round, that copies were provided, particularly when the refusal letter identified that it was not accepted that the evidence produced with the application related to genuine employment.
11. The judge identified a number of issues with the documents produced including inconsistencies between the company's address and that the amounts shown on BT bills for two landlines and broadband suggested that the bills are standing charges and the telephone lines were not used by an active business. Those findings were available to the First-tier Tribunal on the basis of the evidence before the judge. Equally, she was entitled to reach the findings she did that the HMRC letter produced at page 18 of the appellant's bundle listed twelve client companies requiring tax returns, suggesting that the company in question, Delta Services Limited, was a holding company.
12. Given that the respondent in the refusal letter had identified that internet searches could find no trading presence for Delta Services Limited and there were various inconsistencies there was no procedural unfairness in the judge taking into consideration further difficulties of a similar variety in the new documents. I take into consideration that in addition to oral evidence the appellant and sponsor provided witness statements. The sponsor stated that she was employed by Delta and did clean on their behalf and that most of the work was "dependent on what the company tell me to do" including that she will 'leaflet on behalf of my company' and that most of the work was out of hours. It is significant that the sponsor failed to adequately address the respondent's concerns set out in the refusal letter in relation to her employment and I note that the appellant gave similar evidence in his witness statement including that his wife cleaned in the Peterborough area and that she did not travel to London.
13. I take into consideration that the judge did not find either the appellant or the sponsor to be credible witnesses. At [9] the judge found the evidence to be "confusing and in

places contradictory". In addition, at [15], the judge found the evidence about the sponsor's work, "to contain major inconsistencies and in places is irreconcilable. Given that the appellant and the sponsor were asked about very recent events, I am satisfied these inconsistencies cannot be explained by poor memory".

14. Reading the judge's decision fairly and as a whole, I am not satisfied that any procedural unfairness or any material error of law has been disclosed.

Notice of Decision

The decision of the First-tier Tribunal contains no error of law and shall stand.

No anonymity direction was sought or is made.

Signed

Date: 15 June 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As the appeal is dismissed I make no fee award.

Signed

Date: 15 June 2018

Deputy Upper Tribunal Judge Hutchinson