



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/01235/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 14 December 2018**

**Decision & Reasons  
Promulgated  
On 14 January 2019**

**Before**

**THE HON. MR JUSTICE LANE, PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**PH**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Katani, Katani & Co  
For the respondent: Mrs M O'Brien, Senior Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought by the appellant to challenge the decision of the First-tier Tribunal which, in a determination that followed a hearing on 10 August 2018, dismissed the appellant's appeal against the decision of the respondent Secretary of State on 5 January 2018 to give the appellant notice of liability to detention because he had been considered to be a person who was not exercising treaty rights within the United Kingdom.
2. The judge heard evidence from the appellant and made a number of findings. Before turning to those findings which concerned alleged employment with an entity known as the Penny Car Wash, it is, however, necessary to consider what the judge said about the legal position of the

appellant. Beginning at paragraph 16, the judge embarked upon an analysis of the 2016 EEA Regulations. The judge concluded that regulation 6, which defines a qualified person, fell to be construed in a particular way. He did so because he came to the conclusion that the words “remains a qualified person” in the Regulations mean that someone who had been a worker at one stage, but then ceased to be such, before again becoming a worker, did not thereby again become a qualified person.

3. That is the essence of what the judge found albeit the way in which the Upper Tribunal has just expressed it perhaps does not give full justice to the reasoning set out in paragraphs 16 to 24 of the judge’s decision.
4. It is, however, a finding which both Mr Winter, on behalf of the appellant, and Mrs O’Brien, on behalf of the respondent, are agreed is incorrect.
5. A person who begins as a worker and who then ceases to be a worker and does not satisfy any of the other conditions to be a qualified person; but who then at some later stage becomes a worker again plainly, in our view, becomes at that point a qualified person. If that were not so and if such a person had to return to the beginning point, by which we mean as a person who has just entered the United Kingdom and who has an initial three months of residence, then strange consequences would ensue. They are consequences which we are fully satisfied would not be compatible with a purposive reading of the underlying Directive, let alone the Regulations themselves.
6. This, however, is not determinative of there being an error of law in this decision, such as to necessitate the decision being set aside. This is because, beginning at paragraph 25 of his decision, the judge made a series of careful findings about the nature of the employment that the appellant said he was undertaking with Penny Car Wash. The judge noted in paragraph 25 a number of discrepancies in the appellant’s evidence on this matter. Further problematic elements of the documentation put forward by the appellant were identified by the judge at paragraph 26.
7. At paragraph 27, the judge stated in terms that the evidence did not disclose the appellant had been in genuine and effective employment with Penny Car Wash. There was an absence of relevant payslips. That was particularly noteworthy, given that the appellant had been able to produce payslips for other jobs. There was also no bank statement evidence to show that the alleged earnings from Penny Car Wash had been paid into any bank account of the appellant. There were failings or errors in the spelling of the place at which the appellant was said to be employed. There were also problems relating to the alleged start date of the employment.
8. At paragraph 28, the judge looked specifically at the evidence said to have come from HMRC, who said that the appellant had been recorded by them as being in employment with Penny Car Wash. There was, however, no evidence of the source of the information imparted to the HMRC nor evidence in the judge’s view of any checks carried out by HMRC as to the

veracity of any information they may have been given, regarding the appellant's employment with Penny Car Wash. That led the judge to conclude that he was not persuaded that the confirmation by HMRC was of such weight as to show on balance that the work said to have been undertaken by the appellant with Penny Car Wash was genuine and effective.

9. This all led to the following finding at paragraph 29.

“Taken in the round, on a consideration of all available evidence in the appeal, notwithstanding the conclusion drawn about the true construction of the 2016 Regulations, I am not persuaded that the appellant has genuine and effective employment with Penny Car Wash as claimed.”

10. Mr Winter sought to make good the criticisms of the judge's findings. But despite those valiant efforts, the Tribunal has no hesitation in finding that the judge's findings on this matter are free from error of law. As Mrs O'Brien pointed out in submissions, this conclusion does not involve any approach to the relevant legislation that is insufficiently purposive in nature. The question was a plain factual one; namely, whether the employment had been shown to be genuine. For the reasons that the judge gave, which were cumulatively compelling, the judge concluded that that hurdle had not been surmounted by the appellant.

11. That being so, and there being no error such as to require the determination to be set aside, there is no question of the Upper Tribunal receiving further documentation. We record, however, that it is said further documentation relating to Penny Car Wash is now available. If that suggests the position on all the evidence as could now be put to the Secretary of State is different, then, so long as the appellant remains in the United Kingdom, he can put that material put to the Secretary of State and expect a reaction to it.

12. For the reasons the Upper Tribunal has given, however, there is no error of law in this decision of the First-tier Tribunal, such as to require it to be set aside, notwithstanding what we have said about the construction of regulation 6.

### **Notice of Decision**

The appeal is dismissed.

Signed

Date 31/12/18

The Hon. Mr Justice Lane  
President of the Upper Tribunal  
Immigration and Asylum Chamber