Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03593/2013

THE IMMIGRATION ACTS

Heard at Field House	**Oral Determination**
	Promulgated
On 28 June 2013	**On 18 July 2013**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

SEYBOU ASSOUMANE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 13 September 1962. He made an application on 29 June 2012 for a residence card as an acknowledgment of his right to reside in the United Kingdom as the spouse of a Union citizen exercising Treaty rights. The application was dismissed

by the Secretary of State on 14 January 2013. This gave rise to a right of appeal to the Tribunal which the appellant exercised. However, he indicated that he wished the appeal to be dealt with on the papers and that is indeed what occurred on 15 April 2013 when the matter was heard at Sheldon Court in Birmingham, without a hearing, by First-tier Tribunal Judge Snape whose determination was promulgated on 24 April 2013. He recorded that he had no oral evidence or submissions as the appellant had elected to have the case dealt with on papers pursuant to Rule 15(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

2. Although the appellant had stated that his EEA family member was in employment he had only provided payslips covering a relatively short period between 15 April 2012 and 3 June 2012. Enquiries were made by the UK Border Agency with a company called Sure Staff and those revealed that the sponsor's employment had been on hold since 8 September 2012. On 10 January 2013 an official from the UKBA spoke to an employee of Sure Staff working in the payroll department who confirmed that the sponsor had remained on hold since 8 September 2012. On that basis the Secretary of State not unsurprisingly concluded that there was no sufficient evidence to demonstrate that the sponsor was a qualified person, namely a worker exercising Treaty rights. The associated Article 8 claim was therefore dismissed.

3. When the matter came before the First-tier Tribunal Judge he concluded that there was no further evidence. In the notice of the grounds of appeal the appellant, although contradicting the conclusion reached by the UKBA concerning his wife's employment, failed to provide any additional evidence such as up-to-date payslips. On that basis he properly concluded that the concerns raised by the respondent were justified and the appellant had failed to address the issues raised as to the appellant's claim to be the husband of a Union citizen exercising Treaty rights. There is no doubt that the decision of the First-tier Tribunal was correct on the basis of the material that was before him and discloses no error of law.

4. The grounds of appeal to the Upper Tribunal however make two points.

5. First, the draftsman asserts on the basis of instructions, only, that had been received from the client that a payslip and a contract letter had been sent to the court and/or the First-tier Tribunal and that those had been logged. I have caused a search to be made of the Tribunal's computer system and this has revealed no record of such a payslip or contract letter. However that is largely beside the point because for the purposes of this appeal in the Upper Tribunal, it was for the appellant to submit the necessary documents and if such a payslip had not been received as he alleged then it was for him to obtain a copy and re-serve it in time for this hearing. Consequently, the failure (if there was a failure on the part of the Tribunal) to deal properly with the payslip can have no bearing now as far as the Upper Tribunal is concerned since there is no evidence about what that payslip would have revealed. In particular, a single payslip would not

have advanced matters and the contract letter would not have necessarily established that the appellant was exercising Treaty rights.

6. The second point made in the grounds of appeal is that an extension of time was sought by the appellant in relation to ill-health and no acknowledgment was received to that effect. Once again there is no record of that on the computer system but, even if it had been made, then it was for the appellant to establish, by adducing medical evidence to me, that the appellant's ill-health was such that he could not attend the further conduct of this appeal.

7. At the hearing today, the appellant did not attend and his solicitors, Moorhouse Solicitors, did not appear. Each had been served with a notice of hearing by first class post on 30 May 2013, thereby giving almost a month in which the appellant could seek an adjournment if he sought to do so. However, by letter dated 27 June 2013, but only received by the Tribunal on 28 June 2013 at 10:46, an application was made by the appellant's solicitors which was entitled "Letter of withdrawal from the hearing of 28 June 2013". It sought the Tribunal's urgent confirmation that the hearing would not proceed. It said that the appellant was not able to attend the hearing due to ill-health and that he is "very ill and depressed and cannot attend the hearing". In support was a doctor's letter dated 25 June 2013 from The Old Surgery which says

> "This patient is currently under investigation for bladder symptoms and is waiting specialist review for further investigation. He frequently has to go to the toilet to pass urine, often at little notice. Your understanding in this matter would be appreciated".

In my judgment that does not even approach the issue which is before me and that is whether the appellant has produced satisfactory evidence that he could not attend the hearing or that his representative could not attend the hearing and conduct the appeal on his behalf.

8. This was a case which the appellant had known about for some weeks. If he was in the condition that he was said to be in on 28 June it almost inevitably means he was in that condition on 30 May and there is no explanation at all why such a late application for an adjournment should be made. Furthermore, it is not simply the fact that there is an application for an adjournment. The appellant's representatives have withdrawn from the hearing thereby depriving both the appellant and the Tribunal of hearing any submissions in relation to the error of law issue. There was no need for the appellant to attend on that issue. If it was to be established that he was unable to attend because of problems with his bladder, then it would certainly have to be supported by medical evidence to say that he could no longer attend and that he would not be able to attend any future hearings or alternatively that his prognosis was such that it was expected that he would be well enough within a reasonable time.

9. Furthermore, the letter from the appellant's solicitors fails to address the issues raised by the appellant himself in the grounds of appeal. It is said

in those grounds (as I have pointed out) that the appellant forwarded a payslip which indicated that the sponsor was in employment. It is also said there was a contract letter. Given the fact that the judge did not refer to it, it is apparent that this was a document which was needed and which the Tribunal had a right to receive at the first possible opportunity. No attempt has been made to supply the Tribunal with a copy of it. In addition, although it was said on a previous occasion that an application was made for an extension of time due to ill-health, the only material that we have received is the letter from the general practitioner, belatedly dated 25 June 2013, which was far too late to establish that there was any basis for an extension of time when the judge dealt with the matter. In these circumstances I am not satisfied that there was any error of law.

10. In considering whether I should have adjourned the matter not only do I look to the grounds in support of the application for adjournment but I also look to the merits of the appeal itself and I am quite satisfied that the judge reached a sustainable conclusion on the material before him and that the appellant has failed to establish that there was any procedural unfairness by reason of the Tribunal's error in failing to provide him with documents upon which it is said he intended to rely in order to establish that his wife was a Union citizen exercising Treaty rights at the date of decision.

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL