



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00872/14
IA/00878/14

THE IMMIGRATION ACTS

Heard at Field House
On 2nd June 2014

Determination Promulgated
On 30th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

Aminata Ndiaye
(No Anonymity Direction)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Mr Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The application for permission to appeal was made by the respondent but nonetheless for the purposes of this appeal I will refer to the parties as they were described before the First Tier Tribunal.

2. The appellant is a citizen of France born on 20th April 1994 and she appeals against the respondent's decision dated 9th December 2013 to refuse to issue her with a residence card as confirmation of her right of residence as an EEA national exercising treaty rights in the UK under European Community Law.
3. The refusal was made on the basis that she was not a worker and a qualified person in the UK as detailed under Regulation 6 of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).
4. The appellant's application to the respondent was made initially on 25th February 2013, the refusal was made on 9th December 2013 on the basis of insufficient proof of economic activity and an appeal lodged on 19th December 2013.
5. The appellant claimed that she worked for Med Practice Limited and that she had also undertaken self employment. A tax return for 2011-2012 was submitted.
6. On 24th March 2014 First-tier Tribunal Judge Obhi 2013 allowed the appellant's appeal finding that she was a worker. The matter was determined on the papers. In the same determination the judge dismissed the appellant's claimed husband's appeal, (Mr Babatunder Badejo: Appeal No IA/00878.14) and no further challenge was made in that regard.
7. An application for permission to appeal was made by the respondent on the basis that the judge found the evidence in relation to self employment was inadequate but allowed the appeal on the appellant's appeal on the basis that she was a worker. However the judge noted that the most up to date evidence of employment consisted of payslips for November and December 2013. There were no corresponding bank statements to show payments actually being made to the appellant but stated 'it is clear... that she remains employed'.
8. The grounds for permission asserted that the judge had given inadequate reasons for her finding that the appellant was in employment at the date of the hearing in March 2014 when the only evidence of employment was 3 months out of date.

Conclusions

9. Permission to appeal was granted by Judge McDade on the basis that it was arguable, as it was asserted, that the payslips were uncorroborated, they were three months out of date and there were no corresponding banks statements to show that payments were actually being made to the bank.
10. At the hearing I showed Mr Deller the evidence, which was on file for Judge Obhi and Judge McDade to consider and also appeared to have been forwarded to the respondent prior to the determination of the appeal. This consisted of payslips from April, May, June, July, August, September, October, November and December 2013. All bar one of those payslips referred to the payment being made to the appellant in

cash. The BACs payment reference appeared on the December 2013 payslip. Only bank statements which *preceded* that payslip were in evidence. There was no issue taken with the provenance or authenticity of the documents submitted (and I note that they were provided to the respondent prior to the appeal), and the judge referred to the original Med Practice Limited letter dated 15th March 2013.

11. The judge confirmed at paragraph 15 of her determination

“the first appellant has now provided an original letter from MedPractice Limited dated the 15th March 2013 offering her the position of Office Assistant with effect from the 1 April 2013. Further she has provided two payslips for November and December 2013 from Medpractice. These salary slips suggest that payment was made into a bank account. The appellant has proved one original bank statement dated 18th February 2012 to 18th February 2013. There appear to be various deposits made into the (sic) primarily into the Oxford Street branch but there is no evidence of regular payments from an employer. No bank statements beyond that period have been provided. The balance in the account on the 18 February 2013 is £71.97. The only evidence of economic activity was that which was provided to the respondent at the time of the application, and comprises of a self assessment inland revenue income tax return....However, it is clear that she remains employed by Medpractice as an office assistant. That means that she is employed and therefore does meet the requirements of Regulation 6. I am satisfied that she is a qualified person on that basis’.

12. The date in question for the determination is the date of the hearing. The respondent does not confer rights but declares them. At the hearing Mr Deller accepted that the reasons for the challenge appeared to be draining away having had sight of the full evidence before the Tribunal and that 8 months of payslips were a good indication of continued employment. I agree.
13. As I have pointed out above the judge accepted that she was working albeit that payment was not made into a bank account and there were only two payslips. The errors made by the judge – in fact there were payslips on file from the date of appointment to the lodging of an appeal- only disadvantaged the appellant. The appellant may have elected for a paper hearing and may have been entitled to submit further evidence after lodging the appeal but chose not to. I do not find that she can be criticised for that or that, because there is a gap in the evidence, it suggests she is no longer working. She submitted evidence as at the date of the appeal. Further, that does not mean that the appellant’s continuing employment could not be deduced by the judge, from the original Med Practice letter of appointment in March 2013 to the payslips in November and December 2013, all of which she cited, as credible and accepted and as continuing. In the light of the above I find the judge gave, just, adequate reasons.
14. The judge appeared to overlook all the evidence on file and also assumed that all the payslips referred to payment into an account which they did not and this may have been an error but this is to the detriment of the appellant who in fact was successful in her appeal. The fact that the payslips confirmed (all bar the latest) that payment was made in cash was also not something which the judge seemed to realise. This was also an error by the judge but this again was to the appellant’s detriment. The

judge gathered her findings in relation to employment and self employment in one paragraph which made reading more difficult and confusing.

15. The errors identified had no bearing on the other appeal being considered. Although there may have been an error in the explanation and the misapprehension of some of the evidence, I find that there is no error of law in the determination which could make a material difference and the determination of Judge Obhi shall stand.

Signed

Date 26th June 2014

Deputy Upper Tribunal Judge Rimington