



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/31134/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th July 2014

Determination Promulgated
On 05 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR JUDE ASOYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None (Focus Immigration Solicitors no longer instructed)
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 1st October 1972 and he appeals against a decision of the respondent to refuse to grant him an EEA residence card as confirmation of a right of residence in the UK as a family member of a qualified EEA

national. The respondent's decision was made on 8th July 2013. The appellant states that he is married to Ms Cherise Marya Wittenberg a Dutch national.

2. The respondent noted that the EEA national sponsor was said to be self-employed. There were bank statements for the period between 6th June 2012 and 5th September 2012 and a national insurance contribution bill of 31st March 2012 and a self-assessment tax calculation with a receipt for 2011 to 2012. The appellant had failed to provide sufficient evidence of the EEA national spouse's economic activity in the UK. sufficient evidence. There were no recent invoices, statements, audited accounts business bank statements and no advertisements of the said EEA national's company.
3. First-tier Tribunal Judge Reed determined the appeal on the papers and dismissed the appeal on both EEA Regulations and on human rights grounds.
4. Application for permission to appeal was made by the appellant on the grounds that the judge ignored evidence such as the advertisement of the appellant's sponsor's business, business cards, bank statements, invoices and evidence of NI contributions and profit and loss accounts, evidence of filing tax returns and an accountant's letter.
5. The judge erred it was asserted when he did not accept the HMRC tax documents. The appellant's sponsor made a tax declaration from her active business. Self-employed people are permitted to receive cash and it is just that they must properly account for the money received.
6. The judge further erred in law when he stated that an average of £83.20 per week income by the appellant's sponsor for her business was on a small scale as to be regarded as purely marginal.
7. Permission to appeal was granted by First-tier Tribunal Simpson as the judge had arguably applied an incorrect standard of proof and that he had introduced value judgments as to the benefit of the sponsor's economic activity.

The Hearing

8. The appellant did not attend the hearing. On the file was a notice dated 5th June 2014 to Mr Jude Asoya the appellant care of Focus Immigration Services, Fortis House, 160 London Road, Barking, Essex IG11 8BB. I note that further to The Asylum and Immigration Tribunal (Procedure) Rules 2005 Rule 56 every party and any person representing a party must notify the Tribunal in writing of the postal address at which documents may be served on him and of any changes to that address. In the notice of appeal the appellant only gave Focus Immigration Solicitors details, even in the personal address section, and failed to notify the Tribunal of any change of address.
9. Further to Rule 38 of the Upper Tribunal Procedure Rules 2008 if a party fails to attend a hearing the Upper Tribunal may proceed with that hearing if the Upper Tribunal

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and
- (b) considered that it is in the interests of justice to proceed with that hearing.

10. By letter dated 8th July 2014 Focus Immigration Solicitors stated

"We write to inform the Tribunal that we no longer act for the above named person with respect to his pending appeal with the Tribunal.

This is due to the fact the appellant has withdrawn instructions from our office.

In view of the above, kindly remove our details from your system as the appellant will get in touch with the Tribunal."

- 11. Not only is the appellant under a duty to inform the Tribunal of address for service but also this letter from Focus Immigration Solicitors indicates that the appellant was aware that he had a pending appeal and needed to be in touch with the Tribunal Service for details of his pending appeal hearing date.
- 12. I therefore find that as the only address given by the appellant to the Tribunal service was that of Focus Immigration Solicitors, reasonable steps have been taken to notify the appellant of the hearing and that in accordance with the overriding objective it is in the interests of justice to proceed with the hearing. A further delay would cause further expense and I found the appellant had had ample time to notify the Tribunal of any further evidence or submissions he wishes to make.
- 13. I turn to the consideration of the grounds of the application for permission to appeal and note that the grounds state that the Immigration Judge ignored pieces of admissible evidence like the advertisement of the appellant's sponsor's business, business cards, bank statements, invoices, evidence of NI contributions, profit and loss accounts, evidence of filing tax returns and accountant's letters.
- 14. The determination of Judge Reed referred in paragraph 13 to the class 2 national insurance contributions. Judge Reed also referred to the tax documentation for the year ended 6th April 2012 and the tax calculation at paragraph 13.
- 15. At paragraph 14 the judge referred to the set of trading accounts for the period ending 2nd November 2013, to the supporting letter from the firm called Emerald Enterprise Solutions regarding the accounts and at paragraph 17 the judge referred to the handwritten receipts. At paragraph 18 the judge referred to the photocopied business card and the advertisement on the internet.
- 16. The judge addressed each piece of evidence in turn and gave reasons why the judge rejected that evidence.
- 17. The judge referred to the HMRC tax documentation at paragraph 13 and rejected the national insurance contribution on the basis that this was declared by the sponsor and the judge specifically stated that she rejected this because there was nothing to

show that the figures relied on by HMRC were anything other than just declarations by the appellant's sponsor.

18. It is clear that the judge considered the evidence in the round and found against the trading accounts which were drawn up in relation to more than one calendar year.
19. As the judge stated he was left to consider the documents without any clear narrative from the appellant, paragraph 12.
20. The judge at paragraph 16 of the determination considered the bank statements and specifically stated

"There are various transactions and cash deposits but it is unclear where any of this money has come from. In the absence of a clear indication as where any deposits paid into the account have come from, this evidence does little to assist the appellant in this appeal."

21. At paragraph 17 the judge dismissed the handwritten receipts because of the unsystematic way in which it was recorded and the judge stated

"I do not accept that someone operating a business would just be left with a series of torn out receipts as it would be too easy for these to become lost. This evidence has every appearance of having been contrived for the purposes of this appeal."

22. The judge stated at paragraph 17 *"In all circumstances I attach little weight to this evidence as demonstrating that the sponsor is running a business as claimed."*

23. In relation to the assertion that the judge erred by not considering the fact that self-employed people are allowed to receive cash the judge took account of the evidence as a whole and there appeared to be no attempt by the appellant to relate the cash deposits to any invoices. The judge stated that he was left to consider the documents without any clear narrative.

24. I am not persuaded that the judge was setting an unreasonably high a standard of proof for a hairdressing business which was characterised by exchange of cash and indeed at paragraph 19 the judge states quite clearly *"I have considered all of the evidence with care but find the appellant has failed to demonstrate on the balance of probabilities that his EEA national sponsor is indeed genuinely a self-employed person as is claimed."*

25. At paragraph 15 the judge states

"It is also significant that even if I were to take the figures in these accounts at face value (which I do not) over the course of the 56 weeks or so of this profit the net profit shown in these accounts would appear to equate to somewhere in the region of only £83.20 per week."

26. The judge considered this to be marginal.
27. Further to **Begum (EEA - worker - jobseeker) Pakistan [2011] UKUT 275 (IAC)** a person who does not pursue effective and genuine activities or pursues activities on such a small scale as to be regarded as purely marginal and ancillary or which have no economic value to an employer is not a worker.
28. It was the judge's view that the documentation presented to him did not reflect genuine activities, which in turn undermined the findings on any income, and also that the activity was on such a small scale as to be regarded as marginal.
29. I found the grounds of appeal merely to be a disagreement with the judge's findings, which are supported by adequate reasoning, and when read as a whole in the determination are sound.
30. I therefore find that the determination contains no error of law and should stand. Appeal dismissed.

Signed

Date 4th August 2014

Deputy Upper Tribunal Judge Rimington