



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/44477/2013

Heard at Field House  
on 28<sup>th</sup> April 2014

Determination Promulgated  
on 30<sup>th</sup> April 2014

**THE IMMIGRATION ACTS**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NATALIA COSTA  
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mr S Whitwell Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge D Thomas promulgated on the 27<sup>th</sup> January 2014 following her consideration of the merits of the appeal on the papers.
2. The Appellant is a Portuguese national born on the 28<sup>th</sup> December 1956. On 18<sup>th</sup> July 2013 she applied to the Respondent for a Residence Card claiming to have been employed by Jassy Systems Limited since 28<sup>th</sup> October 2012 on a permanent contract of 40 hours per week for which she received an income of £1,500 a month.
3. Section 6.10 of the application contained an employers declaration which has an illegible signature at section 6.11 but no employers stamp in the relevant part of the form, although I accept the same is only required "if available". Wage slips

for the months of March-June 2013 were provided showing a gross monthly wage of £1,500.

4. The application was refused on the 18<sup>th</sup> September 2013 as it was not accepted that on the evidence the Appellant had proved that she was a qualified person. In the refusal letter of the same date the Appellant is advised that the Respondent has been unable to undertake verification checks for the following reasons:
  - i. The address provided for the company does not match the company address on Duedil.com;
  - ii. The company address provided on the application form, cannot be located as an address for "Jassy Services Limited" on Google and this address seems to be in a residential area;
  - iii. The company you claim to work for cannot be located on yell.com, therefore we was unable to call said employer to verify your employment.
5. In her skeleton argument prepared for the purposes of the First-tier appeal hearing the Appellant stated that her employer has a trading address but also trades from the home address of the employer which is that provided in the application form. She was unable to provide an explanation for why the business was not registered with Yell.com and maintains that she is employed as required by the Regulations. It is also asserted that if the Respondent wished to make checks she could have done so at the address provided on the application form.
6. A letter said to be from the employer has also been provided, dated 9<sup>th</sup> December 2013, under cover of a separate letter from the Appellant dated 10<sup>th</sup> December 2013.
7. Having considered all the material provided the Judge stated:
  5. In order to meet the requirements and to prove that she qualifies as a worker under regulation 6 of the EEA Regulations 2006, the Appellant must prove that she is employed. The evidence she provided is limited to a few pay slips, one bank statement and a letter from Jassy Systems Ltd. None of the issues raised in the decision have been properly addressed. If her employment exists as claimed, the Appellant ought be able to produce obvious supporting documentation such as, an employment contract, P60 and tax registration details, current wage slips; and evidence of her employer's company registration, tax registration and accounts. The limited evidence before the Tribunal is not sufficient to discharge the burden of proof of employment which rests with the Appellant. I therefore find the Appellant has not proved that she is a qualified person exercising

European Treaty Rights in the UK. The Respondent's decision in these circumstances, is justified and in accordance with the law.

## Discussion

8. The status of a 'worker' in European law has a defined meaning as recognised in the case of Begum (EEA - worker - jobseeker) Pakistan [2011] UKUT 00275 (IAC) in which the Tribunal held that when deciding whether an EEA national is a worker for the purposes of the EEA Regulations, regard must be had to the fact that the term has a meaning in EU law, that it must be interpreted broadly and that it is not conditioned by the type of employment or the amount of income derived. But 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. In this context, regard must be given to the nature of the employment relationship and the rights and duties of the person concerned to decide if work activities are effective and genuine.
9. In LN v Styrelsen Case C-46/12 CJEU Third Chamber it was held that the concept of "worker" within the meaning of Article 45 of the TFEU expressed the requirement, which was inherent in the very principle of the free movement of workers, that the advantages conferred by EU law under that freedom may be relied on only by people genuinely pursuing or wishing to pursue employment activities.
10. Both cases highlight the requirement for a person claiming to have the status of a worker to be "genuinely pursuing or wishing to pursue employment activities". The burden of proving that such a requirement is met rests upon the Appellant. The Judge was required to consider whether at the date of hearing the Appellant had discharged such a burden upon her on the balance of probabilities.
11. The challenge to the Judge's decision is, in effect, a challenge to the weight she gave to the evidence. Provided the Judge considered the evidence with the degree of care required in an appeal of this nature, commonly referred to as being that of anxious scrutiny, and gave adequate reasons for the findings made, then weight was a matter for the Judge.
12. In this case the Appellant made an application based upon information which was found to be lacking for the reasons set out in the refusal letter. The Appellant was therefore aware of a number of concerns in relation to her claim. Notwithstanding this she provided the letter dated 9<sup>th</sup> December 2013, referred to above, but little else as evidence of her employment.
13. At the date of the hearing the Judge only had the four wage slips for a period ending June 2013 and a bank statement for June 2013, a period seven months

before the date of the hearing. The Applicant must have had a P60 for the tax year 2012-2013 and wage slips up to December 2013 by the date of the hearing if her employment was genuine and ongoing. Additional bank statements proving the receipt of income must also have been available, but were not disclosed. At the hearing before the Upper Tribunal Mrs Costa confirmed that such document were available and even showed the Tribunal copies of the same. They had, however, not been provided to Judge Thomas despite a clear direction having been made advising Mrs Costa of the need to make available her evidence no later than 20<sup>th</sup> December 2013. No satisfactory explanation was provided for why this evidence was not submitted and it is not an error for Judge Thomas not to consider something she was not aware of.

14. At its highest the evidence provided by the Appellant with her application indicated that she may have been employed between March to June 2013 not that she remained employed at the date of the hearing or was engaged with the job market. The letter dated 9<sup>th</sup> January 2013 is not determinative of the Appellant's ongoing employment in light of the issues referred to by the Judge and, on the basis of the limited information provided, it cannot be said that the conclusions reached are perverse or irrational. The Judge put the weight she was entitled to give to the evidence and found, having also considered the reasons set out in the refusal notice, that the Appellant had not discharged the burden of proof upon her to the required standard to prove she was entitled to a Residence Card as recognition of her status as a worker.
15. The Appellant was advised in court that if she has further relevant evidence she can always make a fresh application although Mr Whitwell indicated that such an application has already been made- in April 2014.

**Decision**

16. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

**Anonymity.**

17. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) as there is no application for anonymity which is not justified on the facts.

Signed.....  
Judge of the Upper Tribunal  
Dated the 28<sup>th</sup> April 2014