



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/44786/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Determination**

**Promulgated**

**On 17<sup>th</sup> July 2014**

**On 5<sup>th</sup> August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

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

Appellant

**and**

**TASIB RAJA  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer

For the Respondent: Mr M Reyaz, of Rasools Law

**DETERMINATION AND REASONS**

**Introduction and Background**

1. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal. I will refer to him as the Claimant.
2. The Claimant is a male citizen of Pakistan born 25<sup>th</sup> December 1984 who on 15<sup>th</sup> May 2013 applied for a residence card as the family member of an EEA national exercising treaty rights in the United Kingdom, according to The Immigration (European Economic Area) Regulations 2006 (the 2006

Regulations). The application was made on the basis that the Claimant is married to Renata Zigova a national of the Czech Republic, who is a qualified person under regulation 6 of the 2006 Regulations, as she is a worker in the United Kingdom.

3. The application was refused by Notice of Immigration Decision dated 13<sup>th</sup> October 2013 and a reasons for refusal letter dated 14<sup>th</sup> October 2013 was issued. The Secretary of State was not satisfied that the Claimant's spouse (the Sponsor) was exercising treaty rights as a worker as claimed. Insufficient evidence had been submitted to prove her employment. It was therefore not accepted that the Sponsor was a qualified person as defined by regulation 6 of the 2006 Regulations.
4. The Claimant appealed to the First-tier Tribunal, and the appeal was heard by Judge of the First-tier Tribunal Pickup on 26<sup>th</sup> February 2014. In paragraph 13 of the determination the judge described the evidence given by the Claimant and Sponsor as "frankly appalling" and stated that they "gave inconsistent and incredible evidence, contradicting each other and themselves."
5. However the judge was satisfied the Sponsor was exercising treaty rights, and on that basis allowed the appeal.
6. The Secretary of State applied for permission to appeal. In summary it was contended that the judge had failed to give adequate reasons or findings on a material matter, and had made unclear and contradictory findings. In particular in paragraph 14 the judge found that the Sponsor was working and exercising her treaty rights, but at paragraph 16 had found that the Claimant had not discharged the burden of proof to show on the balance of probabilities that all the requirements of the regulations have been met for the issue of a residence card under regulation 17. It was contended that the judge had failed to provide consistent or cogent reasons for allowing the appeal.
7. The Claimant submitted a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 submitting that the determination disclosed no error of law, and the judge had made findings which were open to him on the evidence. It was submitted that the word "not" in paragraph 16 was a typing error and should have been omitted.

### **The Upper Tribunal Hearing**

8. There had initially been a hearing before the Upper Tribunal on 6<sup>th</sup> May 2014. At that hearing the Tribunal granted an application made by the Claimant to submit evidence that had not been before the First-tier Tribunal, that being a P60 form for the Sponsor, for the tax year ending 5<sup>th</sup> April 2014. The hearing was adjourned to enable the Secretary of State to make enquiries into that document.

9. There then followed written applications by both sides to submit further evidence. However at the hearing before me, both representatives indicated that they did not wish to proceed with the applications that had been made to admit further evidence.
10. Mr Harrison stated that he relied upon the grounds contained within the application for permission to appeal and had no more submissions to make.
11. Mr Reyaz relied upon the rule 24 response contending that the determination disclosed no material error.

### **My Conclusions and Reasons**

12. I do not find that the judge erred in law such that the decision should be set aside. In my view there is a typographical error in paragraph 16 of the determination in that the word “not” should have been omitted.
13. It is clear that the judge considered all the evidence submitted on behalf of the Claimant, and was not impressed with that evidence. The judge set out details of oral evidence given at paragraph 13 of the determination, which he found was inconsistent and incredible.
14. However the judge then recorded at paragraph 14;  

“14. On the evidence, I was very dubious about the nature and terms of the Sponsor’s work; I am far from satisfied as to many aspects of the evidence. However, I have to assess not whether the Sponsor was working or being paid lawfully, but whether she was in fact exercising her Treaty rights by working. Despite my misgivings, I am satisfied on the balance of probabilities that she was working and therefore exercising her Treaty rights.”
15. The judge went on in paragraph 15 to confirm that on the evidence he had considered the Claimant was entitled to a residence card. Although the judge’s finding in paragraph 16 appears to conflict the findings referred to above, I am satisfied that this can be explained by a typing error, as the judge goes on, following paragraph 16, to confirm that the appeal is allowed, and to confirm because the appeal is allowed a full award is made.
16. I therefore have no doubt that the judge intended to allow the appeal.
17. I do not find that the judge has failed to consider evidence, nor has he given weight to any immaterial matters. The judge has considered the evidence put before him, and although finding it unsatisfactory in some aspects, found that the Claimant’s case had been proved on a balance of probability, and the judge gave adequate reasons for his findings.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. I dismiss the appeal of the Secretary of State.

**Anonymity**

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

25<sup>th</sup> July 2014

**TO THE RESPONDENT  
FEE AWARD**

The fee award made by the First-tier Tribunal stands.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

25<sup>th</sup> July 2014