



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

Appeal Number: IA/51761/2013

THE IMMIGRATION ACTS

Heard at Field House

On 19 June 2014

Determination

Promulgated

On 26 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ROMANO GODFREY WHITE

Respondent

Representation:

For the Appellant/The Secretary of State for the Home Department: Ms A Holmes

For the Respondent/Claimant: None

DECISION AND REASONS

1. The claimant (whom I will refer to as the appellant as he was before the First-tier Tribunal) Mr Romano Godfrey White is a citizen of South Africa and his date of birth is 15 September 1984. He applied for permanent residence pursuant to the Immigration (European Economic Area)

Regulations 2006 on the basis that he has continually resided in the UK with his spouse Justyna Rowinska, who is a Polish national.

2. The Secretary of State refused the application because the appellant had not established that the EEA sponsor had been exercising treaty rights in the United Kingdom for a continuous period of five years. The appellant appealed against the decision of the Secretary of State of 24 September 2013 and his appeal was allowed by Judge of the First-tier Tribunal Hembrough in a determination which was promulgated on 31 March 2014. The matter was determined on the papers at the request of the appellant. Permission to appeal was granted to the Secretary of State and thus the matter came before me.

The Findings of the First-tier Tribunal

3. The Judge made the following findings:

- “10. The documents before me were those on the appeal file including a miscellany of original documentation submitted by the Appellant with the notice of appeal and a Respondent’s bundle comprising the application, immigration decision, reasons for refusal letter and notice of appeal.
11. Before making a determination in this appeal I have considered all of the admissible documentation in light of the grounds of appeal.
12. As I have already noted the Appellant was given an EEA registration certificate on 14 November 2007 on the basis of his marriage to the Sponsor. It follows that the Respondent must have been satisfied that the latter was exercising EEA Treaty rights at that time. Original Accession State Worker Registration Certificates were submitted with the notice of appeal which I find show that Sponsor was employed in 2008 and 2009. I note that she gave birth to a son on 19 October 2010 of whom the Appellant is the father. In the birth certificate she is described as a quality controller.
13. A P60 for the year 2010/11 shows that she was employed with a temping agency at least for part of that year and original correspondence from HMRC shows that she was working in 2011/12 and has been working ever since as evidenced by further HMRC correspondence, tax returns, P60s and bank statements. I find that that she did not cease to be a qualified person by reason of her maternity.
14. Evidence in the form of correspondence from HMRC, DWP and South Holland District Council shows that the Appellant and the

Sponsor have been residing together at the same address and continue to do so.

15. The Appellant has submitted HMRC corresponded and P60s showing that he has been working in the UK since 2010. A Police Service subject access request confirms his presence here in 2008 and 2009.
 16. Looking at the evidence before me in the round I find that I have been satisfied on the balance of probabilities that as at the date of the refusal decision the Appellant had resided in the UK in accordance with the 2006 Regulation for a continuous period of 5 years. I therefore allow the appeal with reference to the 2006 Regulations.”
4. At the hearing before me the appellant attended with the sponsor and their young son. It was clear to me that Judge Hemrough’s decision to allow the appeal was based on documentation produced by the appellant. However, there was no appellant’s bundle on my file and Ms Holmes did not have sight of this. The Judge did not specify the documents that he relied on, but the appellant attended the hearing with a bundle of documents which he stated had been before the First-tier Tribunal. He stated that the original documents had been returned to him by the Tribunal following Judge Hembrough’s decision. Ms Holmes agreed to consider the documents that the appellant had brought to the hearing. In my view, it is not clear how the Judge reached his conclusion. It is not apparent from the determination whether his conclusion was a legitimate inference that was open to him to draw on the evidence before him or whether he engaged in speculation.
 5. Having given Ms Holmes the opportunity to consider the paperwork that was before the First-tier Tribunal, she conceded that the error of law was not material. It was open to the Judge to allow the appeal, but he should have given more detailed reasons for his decision. She referred me to specific documentation, namely as follows:
 - (1) an Accession State Worker Registration Scheme registration certificate issued 5 January 2009;
 - (2) an Accession State Worker Registration Scheme registration certificate dated 27 September 2005;
 - (3) an Accession State Worker Registration Scheme registration certificate dated 27 July 2009;
 - (4) the EEA sponsor’s P60 for the year ending 5 April 2013;

- (5) a letter from HM Revenue & Customs to the EEA sponsor of 10 February 2014 which outlines her employment history and income from April 2007 until the tax year ending 5 April 2010;
 - (6) a document from HM Revenue & Customs relating to the appellant and the EEA sponsor relating to amended tax credits between 6 April 2013 and 5 April 2014;
 - (7) a document from HM Revenue & Customs referring to amended tax credits awarded for the period between 6 April 2011 and 5 April 2012;
 - (8) a document from HM Revenue & Customs relating to tax credits awarded to the appellant and the EEA sponsor for the period from 6 April 2013 to 5 April 2014;
 - (9) a P60 relating to the EEA sponsor for the tax year ending 5 April 2011.
6. In my view, it was open to the Judge to infer that the EEA sponsor had been exercising treaty rights in the UK for a continuous five year period in accordance with the 2006 Regulations. It is regrettable that the Judge did not make it clear on what evidence his decision was based. It was conceded by Ms Holmes that there was no issue in relation to maternity leave because the documentation submitted by the appellant was sufficient to establish that the EEA sponsor had been a worker and therefore there was no argument under **Prix v SSWP [2012] UKSC 49**.
7. There was no material error in the determination of Judge of the First-tier Tribunal Hembrough and the decision to allow the appeal under the Immigration (European Economic Area) Regulations 2006 stands and the appeal of the Secretary of State is dismissed.

Signed Joanna McWilliam

Date 25 June 2014

Deputy Upper Tribunal Judge McWilliam