



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/10970/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 January 2015

Decision & Reasons Promulgated  
On 26 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MRS HASARAT KEHINDE KOLA-BALOGUN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr H Olajuwani, Solicitor, Bloomfield Solicitors  
For the Respondent: Ms S Vidhyadharan, Specialist Appeals Team

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision by the Secretary of State to refuse to issue her with a residence card as confirmation of her right to reside in the United Kingdom as a spouse of an EEA national exercising treaty rights here. The First-tier

Tribunal did not make an anonymity direction and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

2. The appellant is a national of Nigeria, whose date of birth is 23 May 1986. In her application form she said she had lived in the UK for three years and eleven months. On 28 June 2013 she had married Mr Mbayi Mubedi. On the marriage certificate he was described as a retailer, and she was described as a receptionist. She represented in the application form that her husband had embarked on a permanent job with A1 Teaching Solutions Ltd in Birmingham on 15 July 2013 receiving a salary of £200 each week. He was working 35 hours. She attached an unsigned employment contract stating, "the employee will will (sic) be paid weekly in arrears by BACS". She provided four payslips purportedly issued to her husband in August 2013. These were for a gross wage of £200, with deductions of £9.72 by way of income tax and national insurance, so as to produce a net pay figure of £190.28. She also produced payslips for the last two weeks of July 2013.

### **The Reasons for Refusal**

3. On 14 February 2014 the Secretary of State gave her reasons for refusing the application. Upon assessing the documents provided, the Secretary of State had undertaken various checks to verify the employment, but had been unable to do so. On 14 February 2014 a telephone call was attempted to the alleged employer A1 Teaching Solutions Ltd using the number provided in the EEA 2 application form. That number did not lead to A1 Teaching Solutions Ltd but instead was answered by another company who had never heard of the sponsor's alleged employer. While every attempt had been made by UKBA to establish her sponsor's employment, the burden of proof rested with the applicant to provide such evidence and she had not discharged that burden.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

4. The appellant's appeal came before Judge Kinnell sitting at Kingston Crown Court in the First-tier Tribunal on 3 October 2014. Both parties were legally represented. For the purposes of the appeal hearing, the appellant's solicitors compiled an appellant's bundle which contain some further documentary evidence relating to the sponsor's claimed employment. On 24 February 2014 Ernest Nmerukni, personnel manager of A1 Teaching Solutions Ltd, certified that "her" (referring to the appellant) current annual salary was £10,400.
5. At page 25 of the bundle there was a printout from a Google search showing that A1 Teaching Solutions Ltd in Birmingham came up on a Google search. It was described as an educational recruitment agency, supplying the best teachers to schools and colleges in the UK. They provided staff at all levels.
6. At pages 36 to 42 of the bundle there were photocopies of additional payslips purportedly generated between 27 December 2013 and 28 March 2014. These were for the same basic pay of £200, but there were no income tax deductions, so the

appellant's net pay had apparently risen to £193.88 each week. The payment method was said to be cash, not BACS.

7. In his subsequent decision, the Judge gave an account of the proceedings at paragraphs 5 to 17. Under cross-examination, the sponsor said that he was a community officer working for A1 Teaching Solutions. He commenced employment in July 2013. His job was to inform people about work as a supply teacher in Manchester. He walked about the streets handing out tracks, advising that if anyone was interested in such work they should go to A1 for Training. It was his job to hand out leaflets but he did not have any leaflet with him to exhibit at the hearing. He was paid £200 a week, now reduced to £150 a week because he had reduced his hours from 35 to 20 in order to look after his son. His wage was paid into his wife's bank account as it was too low to open a bank account. His wife gave money to him if he needed it. He had a contract of employment but it was not included in the documents. Ernest Nmerukni was his manager and employer. There was no re-examination.
8. In her evidence, the appellant said that her husband worked for about twenty hours a week, for which he was paid, she thought, £7.50 an hour. The money was paid into her bank account as her husband had no bank account of his own. There was no re-examination.
9. In closing submissions on behalf of the appellant, Mr Olajuwan invited the Tribunal to find both witnesses credible, as they had given mutually corroborative evidence. There was no report of the telephone call that the respondent had attempted to make (as referred to in the refusal letter), but in any event there were further documents answering the point.
10. The Judge's reasons for dismissing the appeal were set out in paragraphs 18 to 23. He rejected the evidence that the sponsor was employed by A1 Teaching Solutions for a number of reasons. Firstly, his evidence about his responsibilities was extremely vague and improbable. Secondly, he paid particular attention to the fact that he was not paid the income he said he earned, which was deposited in his wife's account. It was possible that the appellant was employed by A1 Solutions, but he found as a fact that her husband was not. He did not accept that if the sponsor was truly employed in the United Kingdom he would not be paid directly and have his own bank account. He continued: "his evidence the amount of money he earns is too low to justify the opening of an account does not stand up to scrutiny because his wife, the appellant, who according to the evidence has no earnings of her own, does have an account."
11. He had seen a copy of an RBS bank account belonging to the appellant which showed monies paid in as an automated transaction from A1 Teaching Solutions but according to the wage slips he had been shown the husband was paid in cash. This was a clear and obvious discrepancy, and supported a finding that it was in fact the appellant who was employed by A1 Teaching Solutions and that the wage slips that he had been shown were fabricated.

12. He accepted that A1 Teaching Solutions had a website. But it did not of itself amount to proof that the appellant's husband was employed by that company.

### **The Grant of Permission to Appeal**

13. On 25 November 2014 First-tier Tribunal Judge PJG White granted the appellant permission to appeal. It was arguable that the Judge had misdirected himself with regard to the evidence heard, in particular the reason that the sponsor did not have his own bank account and whether the appellant had her own earnings. It was arguable the Judge failed to give sufficient weight to the fact that the appellant would have submitted original documents to the respondent with the application. It was arguable there had been procedural unfairness and that the Judge relied on what he considered to be discrepancies concerning entries in the appellant's bank statement but without allowing the appellant and the sponsor an opportunity in their evidence to address his concerns. Finally, the Judge's finding that the appellant was employed by A1 Teaching Solutions arguably failed to take into account that the company was located in Birmingham, whereas the appellant's address was in Manchester.

### **The Rule 24 Response**

14. On 9 December 2014 Karen Pal settled a Rule 24 response on behalf of the respondent. The respondent opposed the appeal. The First-tier Tribunal Judge was entitled to make the findings of fact that he did as set out in his decision at paragraphs 18 to 22. The findings were adequate, and had been supported by reasons. The grounds of appeal were a disagreement with the findings made by the Judge.

### **The Hearing in the Upper Tribunal**

15. At the hearing before me, I reviewed the documentary evidence that had been before the First-tier Tribunal. This included a set of RBS bank statements for an account held by the appellant which had been produced in the course of the hearing. I was also shown some documents by Mr Olajuwan which he said had been available at the hearing, but which had not been tendered in evidence. These documents related to attempts by Mr Mubedi to open a bank account in June and July 2013. On 7 June 2013 RBS rejected his request to open a Select Silver account because, following standard security checks, they had found out that he did not meet the criteria required to open a Royal Bank of Scotland account. In July 2013 Mr Mubedi had applied to open an account with NatWest Bank. On 11 July 2013 NatWest wrote to him thanking him for choosing to open a Select account with them, and setting out the things he needed to do before the account could be open. I pointed out to Mr Olajuwan that the NatWest correspondence did not show that the sponsor's attempts to open an account with NatWest had been thwarted by a low credit rating. Mr Olajuwan relied on the fact that there was an RBS logo at the bottom left of each page of the NatWest correspondence.

16. In any event, he relied on these additional documents as showing that the Judge had wrongly recorded the sponsor's explanation for not having his own bank account. It was not because his wages were too low, but because of his low credit rating. I asked him why he had not introduced the documents now sought to be relied upon by way of re-examination. He said it was because he thought the Judge had accepted the sponsor's explanation for not having a bank account of his own.
17. In support of the submission that the Judge had been perverse to find that the appellant, rather than his sponsor, was working for A1 Training Solutions, Mr Olajuwan produced a set of bank statements relating to another bank account held by the appellant. These show that in the period running up to the hearing in the First-tier Tribunal the appellant had been earning a monthly salary of about £1,000 net from another employer. Mr Olajuwan submitted that this showed that the appellant could not have been working for A1 Training Solutions as well, particularly as the company was based in Birmingham, whereas both she and the sponsor lived in Manchester.
18. On behalf of the respondent, Ms Vidhyadharan submitted that the burden of proof rested with the appellant, and so the responsibility lay with the appellant and his legal advisors to ensure that the First-tier Tribunal Judge was provided with all the relevant material to discharge that burden of proof. The Judge had given adequate reasons for dismissing the appeal on the evidence that had been made available to him.

### **Discussion**

19. According to the employment contract and employment letter, Mr Mubedi was engaged to provide the services of a community development officer. But A1 Teaching Solutions Ltd does not purport to provide a service to the community. Its clients are teaching institutions. The Judge had the benefit of seeing how the sponsor performed under cross-examination, and it was reasonably open to him to form the belief that the sponsor's vaguely described employment was inherently improbable and a complete fabrication.
20. In the course of the hearing before me I reviewed the Judge's manuscript record of the evidence, and his manuscript record accords with the typed record inherent in the decision. After giving an account of his wages, the sponsor is recorded as saying that his wages are paid into his wife's account. He gave the following explanation: "too low to open account".
21. Given the context, the Judge reasonably understood the sponsor to be saying that his wages were too low to open an account, rather than that his credit rating was too low to open an account.
22. In the light of the evidence which has been provided to me, I am prepared to accept the Judge may have misunderstood the sponsor's explanation.

23. But I do not find that this translates into a material error of law for two reasons. Firstly, the appellant had at all material times the benefit of legal representation, and going into the hearing the appellant and her legal advisors were well aware that the core issue was the credibility of the sponsor's asserted employment. The fact that there was no evidence of the sponsor's claimed wages being paid into a bank account held by the sponsor clearly called for an explanation, and it was reasonably foreseeable that an adverse inference would be drawn by the Judge if a satisfactory explanation was not given, backed up by supporting documentary evidence. So, insofar as the Judge did make a mistake of fact, the appellant's legal advisors are not absolved of blame.
24. Secondly, and in any event, the adverse credibility finding made by the Judge still holds good; and indeed it is arguably reinforced by the material that was not shown to the Judge. The Judge did not find it credible that the sponsor was not able to open a bank account to receive the weekly wages allegedly paid to him by A1 Training Solutions Ltd. It is not actually stated in the June 2013 rejection letter that the reason for not allowing the sponsor to open an account is a low credit rating. But even if this is assumed to be the reason, by the time that the sponsor applied to open a bank account with NatWest in July 2013, he had allegedly secured an offer of permanent employment with A1 Training Solutions Ltd. So the explanation that the sponsor was *nonetheless* unable to open an account is manifestly lacking in credibility, and it is not supported by the documentation which has now been disclosed.
25. The third reason given by the Judge for disbelieving the claim was the discrepancy between the payslips referring to payment in cash and the entries in the appellant's bank statements showing her receiving wages from A1 Training Solutions via BACS. It will be recalled that the bank statement evidence was tendered in the course of the hearing to support the sponsor's oral evidence that, because he did not have a bank account, his wages were paid by BACS into his wife's bank account. As the appellant was legally represented, I do not consider that there was any procedural unfairness in neither the appellant nor the sponsor being cross-examined about the wage slips in the appellant's bundle referring to payment by cash. The anomaly was a glaring one; and it would have been, or should have been, apparent to the appellant and her legal advisors at the outset of the hearing.
26. There was also no procedural unfairness in the Judge failing to explore with the appellant the question of whether she had a separate source of earnings from employment. Her witness statement is completely silent on the topic of employment, and there was no disclosure before or during the hearing of bank statements showing her receiving a salary from another employer. Furthermore, it was not perverse even in retrospect for the Judge to postulate that the appellant was employed by A1 Training Solutions Ltd rather than the sponsor. The total level of earnings which the appellant receives each week on this hypothesis is not inconsistent with her having two part-time employments. There was also no perversity on geographical grounds, as suggested in the application for permission to appeal. The appellant's case was that the sponsor travelled from Manchester to Birmingham every day to undertake his employment with A1 Teaching Solutions Ltd, and so there is no reason why she

could not have done the same. Moreover, the contract of employment expressly provides that the employee may be required to work somewhere else apart from at the offices of A1 Training Solutions Ltd in Birmingham.

27. In granting permission to appeal, Judge White observed that the appellant is likely to have provided originals with her application, and that the Judge arguably failed to take this into account. But in paragraph 20 of the decision the Judge was referring to photocopies of letters and wage slips in the *appellant's* bundle, not photocopies of documents appearing in the *respondent's* bundle. Mr Olajuwan said that he had produced the originals of the photocopied wage slips in the appellant's bundle in the course of the hearing. But the Judge's observation that, "in the age of the word processor such documents are easy to generate and do not necessarily represent the truth" is equally applicable to the pristine "originals" which I inspected.
28. In conclusion, I find that the Judge has given adequate reasons for finding that the appellant did not discharge the burden of proving that the sponsor was employed by A1 Training Solutions Ltd, and that the proceedings before the First-tier Tribunal were not vitiated by procedural unfairness.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and this appeal to the Upper Tribunal is dismissed.

The First-tier Tribunal did not make an anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Monson