



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34491/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 6 May 2015

Determination Promulgated
On 12 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ISAAC JAMES AKESSEH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Afzhal for IIAS

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant, a national of Ghana was born on 4 August 1977. The Appellant appealed against the decision of the Secretary of State dated 13 August 2014 to refuse to grant an application for a residence card as a confirmation of his right to reside in the United Kingdom under the Immigration (EEA) Regulations 2006. First-

tier Tribunal Judge Pickup dismissed the appeal and the Appellant now appeals with permission to this Tribunal.

3. Permission was granted on 2 February 2015 by Designated Judge of the First-tier Tribunal Macdonald on the basis that that the Judges findings were 'inconclusive' in relation to whether the sponsor was working at the date of the hearing.
4. The background to this appeal is that the Appellant sought a residence card on 27 September 2011 which was granted. On 23 May 2013 the Appellant was encountered entering the United Kingdom via Manchester Airport and refused admission under EEA Regulations. On 16 July 2013 the Appellant applied for a residence card and on 13 August 2014 the application was refused and the previous residence card was revoked.
5. The Respondent refused the application because the Appellant had claimed that the EEA family member was employed and produced wage slips from January to April 2014. On 13 August the Respondent telephoned the claimed employer and he confirmed that the sponsor no longer worked for the company. The application was therefore refused on the basis that the Appellant had not met the evidential burden of establishing that his sponsor was a worker for the purpose of Regulation 6.
6. The First-tier Tribunal Judge dealt with the case on the papers and had before him a bundle of documents under cover of a letter from the legal representatives dated 12 November 2014 which consisted of a witness statement (pages 1-4) and all of the remaining evidence related to medical evidence. The Judge also had the Respondent's bundle of documents on which the Respondent's decision was based.
7. The Judge made the following findings:
 - (a) The Appellant claimed in the grounds of appeal that his wife worked for CSS on 16.5.2014 but was now working for Bennett Staff Bureau and Breanheath Ltd. The Judge found there was therefore no explanation as to why the application for the residence card made in July 2014 stated that the sponsor worked for CSS when she had left that employment 2 months previously.
 - (b) The Judge found that there was an inconsistency between the P45 for CSS and the wage slips submitted.
 - (c) The Judge found that there was no evidence of the claimed salary in the bank statements produced in that they only showed one payment that might have been from employment but it was inconsistent with the salary claimed for the matching period.
 - (d) There was no evidence that the sponsor worked for Breanheath beyond June 2014.
 - (e) Only one payslip was produced for Bennett Staff Bureau and that dated to 24.1.2014 and it was not supported by bank statements.
 - (f) The Appellant and sponsor appeared to be in financial difficulties.

- (g) He took into account relevant caselaw in determining whether the sponsor was pursuing 'effective and genuine activities' in determining whether the sponsor was employed.
 - (h) He found that there was little evidence of genuine employment and it was unclear what period that covered.
 - (i) At the time of the application there was no evidence that the sponsor worked for the Employer stated in the application.
 - (j) Only after refusal did the Appellant submit other 'entirely unsatisfactory' evidence of employment and he continued '*Even then there is only 1 wage slip covering the period of June 2014 and nothing to show that the sponsor is currently employed in any shape or form.*'
8. At the hearing before me Mr Afzhal sought to argue that the evidence contained in the bundle of 30 April 2015 showed that the sponsor was working. I pointed out to Mr Afzhal that this evidence was not before Judge Pickup and Mr Afzhal conceded that this was correct and that had been a mistake.
9. Ms Johnstone submitted that the Judge had considered all of the evidence that was before him and was clearly not satisfied that the sponsor was working at the time of the decision. The finding was open to him. The new evidence relied on by Mr Afzhal should form the basis of a new application.

Error of Law

10. The Appellant appealed against a refusal of an application for a residence card, an application based on the claim that the Appellant's Dutch spouse had been and continued to exercise treaty rights in the United Kingdom as a worker.
11. The application which was dated 15 July 2014 was based on the assertion that the Appellant's spouse was working for a company called CSS. The Judge found at paragraph 15 that this was incorrect as the sponsor had left that employment in May 2014 two months before the application and also found that the evidence of the claimed income was inconsistent. These were findings open to him on the evidence before him.
12. In the appeal the Appellant stated that his wife worked for Bennett Staff bureau and Breanheath. The Judge examined the evidence of this other employment in detail at paragraphs 17 and 18 and identified that in essence there was little evidence to support the claimed receipt of any income. These were findings open to him.
13. The Judge made findings that the Appellant and his spouse were in financial difficulties which the grounds suggest were irrelevant. I reject that argument: given that the Judge's findings were that neither the Appellant nor his wife were in employment their financially precarious state provided some support for that view.
14. The Judge concluded at paragraph 22 that there was nothing to show that the sponsor was at the time of the decision, the relevant date for his decision, employed '*in any shape or form.*' I struggle to find anything inconclusive about his finding. The Judge could not have made it clearer that the Appellant had not met the evidential

burden of establishing that his wife was working at the time of the decision. The evidence relied on by Mr Afzhal today was not before Judge Pickup and may for the basis of another application.

15. I find that the reasons given were more than adequate and the Appellant cannot be in any doubt about why the appeal was dismissed.

CONCLUSION

16. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

17. **The appeal is dismissed.**

Signed

Date 6.5.2015

Deputy Upper Tribunal Judge Birrell