



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

Appeal Number: IA/38438/2014
IA/38440/2014

THE IMMIGRATION ACTS

Heard at Field House

On 20 May 2015

**Decision and Reasons
Promulgated
On 28 May 2015**

Before

**UPPER TRIBUNAL JUDGE CANAVAN
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS ROSE CHINEZE NKIRUKA
MISS JENNIFER NKECHI NKIRUKA
(ANONYMITY ORDER NOT MADE)**

Respondents

Representation:

For the Appellant: Mr E. Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr T. Ojo of Graceland Solicitors

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-tier Tribunal. We find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

Introduction

1. The Secretary of State was granted permission to appeal against the decision of First-tier Tribunal Judge Clapham allowing the respondent's appeal in a decision that was promulgated on 21 January 2015. The appeal was determined without a hearing on the papers that were before the Tribunal. For the sake of convenience this decision will refer to the parties as they were before the First-tier Tribunal albeit that the respondent is technically the appellant in this particular appeal.
2. The first appellant is a citizen of Nigeria whose date of birth is 24 August 1964. The second appellant is the first appellant's daughter. She is also a citizen of Nigeria, and her date of birth is 30 April 1995. They appealed to the First-tier Tribunal against the respondent's decision to refuse to issue residence cards recognising their right of residence as family members of an EEA national. The only reason for refusal was that the respondent was not satisfied that the appellant had produced sufficient evidence to show that her husband was in employment and therefore exercising his rights of free movement within the meaning of regulation 6 of The Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations 2006").
3. The judge accepted that there was evidence to show that the EEA sponsor ceased to work for Dockside Personnel in November 2013 but there was also evidence to show that he continued to work for a second employer, Alpha Consult UAE Ltd, until at least the middle of August 2014. The judge noted that the situation had moved on since the respondent made the original decision but concluded that if the EEA sponsor was actively seeking work after his second job at Alpha Consult UAE Ltd came to an end that "would not necessarily be fatal to the position of the appellants" [10].
4. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law because he did not have evidence before him to show that the EEA sponsor was a jobseeker at the date the appeal was decided. The grounds argued that it was not clear on what basis the judge considered he had power to allow the appeal and "remit" the case back to the respondent for further consideration.
5. The matter came before us to determine whether the First-tier Tribunal erred in law.

Submissions

6. At the hearing we asked Mr Ojo what evidence there was before the judge that might indicate that he was a jobseeker. Mr Ojo was able to point to a number of emails in the appellant's bundle before the First-tier Tribunal, which showed that the EEA sponsor made enquiries about jobs during November and December 2014. Mr Tufan accepted that on the face of the evidence it appeared to show that the EEA sponsor was looking for work during that time.

Conclusions

7. In light of the evidence that was before the First-tier Tribunal, which showed on the balance of probabilities that the EEA sponsor was likely to have been actively seeking employment in the period shortly before the determination of the appeal, we find that the First-tier Tribunal judge was entitled to come to the conclusion that the EEA sponsor was a jobseeker and therefore fulfilled the requirements of regulation 6(1)(a) of the EEA Regulations 2006 at the date the appeal was decided. For this reason the decision discloses no material error of law.

DECISION

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

The decision of the First-tier Tribunal shall stand

Signed 

Date 27th May 2015

Upper Tribunal Judge Canavan