



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

Appeal Number: IA/30381/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 18th September 2017

On 09 October 2017

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**SHAHROZ RIAS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, instructed by Goodfellows Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 7th August 1991. He appeals against the decision of First-tier Tribunal Judge L Rahman, dated 22nd December 2016, dismissing his appeal against the refusal of a residence card as confirmation of a right of residence under the Immigration (EEA) Regulations 2006.
2. Permission to appeal was sought on the grounds that the judge had erred in law in his assessment of whether the Sponsor was exercising Treaty

rights. The Appellant's legal representative drew the judge's attention to a bank statement showing that money had been paid in by Apex Trust, which showed that the Sponsor was supplying cleaning services to them. The judge failed to take this evidence into account in concluding that she was not exercising Treaty rights.

3. Permission was granted by First-tier Tribunal Judge Page on 10th July 2017 on the basis that the judge had made a mistake of fact, at paragraph 47, in recording that the Appellant's solicitor confirmed there were no documents from any clients to show what any of the payments related to.

The judge's decision

4. At paragraph 41 the judge stated: "When asked again by her representatives when she had started working as a cleaner, the sponsor replied 'when registered the company on 25th March 2015'. When asked whether she had done any cleaning work before the company had been registered, the sponsor replied 'no'. When the question was repeated to the sponsor, she replied 'Yes. Did work'. When asked what work she had done, she replied 'cleaning private houses' and confirmed that she had been paid cash in hand.
5. At paragraph 63 the judge concluded: "The sponsor claims that she has been exercising Treaty rights in the UK by working as a cleaner (whether as a self-employed person or as an employee i.e. worker). Based upon her own evidence she either started working as a cleaner in November 2014, August 2014, February 2015, October 2014 or 25th March 2015. I find that the question of when she has started working as a cleaner is a fundamental issue and goes to the core of her claim to have been exercising Treaty rights in the UK. The discrepancy in the dates provided are significant and the appellant has failed to provide any explanation for the discrepancy. Even when provided an opportunity to explain the discrepancy, the sponsor avoided answering the question."

Submissions

6. In submissions, Mr Spurling took issue with paragraphs 41 and 63 of the decision. He accepted that there were no letters from any of the Sponsor's employers to show that she had provided cleaning services for them. However, there were invoices and there were entries in her bank statements. There were accounts from her company and there was information and records from HMRC. Mr Spurling submitted that the judge had drawn inferences which were not open to him. There was evidence before the judge to show that, on the balance of probabilities, the Sponsor was working as a cleaner in the UK.
7. Further, having had his attention drawn to the bank statement showing that payments had been made into the Appellant's bank account, the

judge failed to take this into account. Even though the invoices did not match the payments in the account, there was clear evidence that money was paid into the Sponsor's account by a person named on the invoices and therefore she was providing cleaning services.

8. The judge had effectively looked at the evidence from the wrong angle. He was approaching the case as if there had been an allegation of fraud rather than looking at whether there was sufficient evidence to show, on balance, that the Sponsor had been working. The basis on which the judge concluded that the Sponsor was not exercising Treaty rights was flawed. He had failed to consider alternative conclusions and had not taken the evidence as a whole. He looked at each individual piece of evidence and assessed it in isolation, rather than looking at all the evidence which was before him. He had also drawn inferences which were not open to him on the evidence. His approach to the decision was legally flawed because the judge had failed to demonstrate that he had looked at the evidence collectively. The bank statement entries were sufficient to show that the Sponsor was being paid for her services as a cleaner.
9. Mr Tufan submitted that the judge might well have come to a different conclusion, but he was entitled to come to the conclusion he did on the evidence before him. Mr Tufan submitted that the challenge made by Mr Spurling was in effect a rationality challenge. The invoices did not match the dates or the amounts in the bank statements. It was open to the Appellant to make a fresh application and submit sufficient evidence of the Sponsor's employment or self-employment. The judge's decision was adequately reasoned and his conclusions were open to him.
10. Mr Spurling submitted that this was a challenge to process and the outcome was unreliable. The evidence should be reassessed because the judge had not taken all the evidence together. The judge had found that individually each piece of evidence did not show that the Appellant was working, but taken together, and looking at the totality of the evidence, the judge could well have reached a different conclusion.

Discussion and conclusions

11. Permission to appeal was granted on the basis that the judge had made an error of fact. I am not satisfied that is the case. The judge was aware, from the bank statement which was drawn to his attention, that monies were paid into the Sponsor's account by Apex Trust. The judge found that there was no evidence from Apex Trust to confirm that the Appellant had been paid for her cleaning services. It was accepted there was no evidence from any of the Sponsor's employers to show that she had provided cleaning services.
12. I am also not persuaded by Mr Spurling's submission that the judge failed to look at the evidence as a whole. The judge assessed the oral evidence

of the Sponsor, her witness statement and the documentary evidence. He found her evidence, of when she started working, to be unclear.

13. There was certainly a lack of clarity as to when the Sponsor was self-employed and when she was working for ASR Services or when it was actively trading as a business. There was insufficient evidence before the judge to show that ASR Services was or is trading in the Sponsor's name. The accounts were not audited and the judge gave cogent reasons for why he attached little weight to them and the evidence from HMRC. It is quite clear from paragraph 58 onwards that the judge looked at all the evidence in the round. He referred to every piece of evidence upon which the Sponsor relied and gave reasons for the weight he attached to that evidence.
14. There was no error of law in the judge's approach to the evidence. He concluded that the Sponsor's evidence was vague and contradictory about when she was working and for whom. There was no documentary evidence from her claimed employers. It was unclear whether the Sponsor is trading as ASR Services and when the business started actively trading. The accounts were not audited. The entries in the bank statements did not correspond to the invoices on either the amount paid or the date. It was accepted by Mr Spurling that none of the invoices submitted correlated with any of the entries in the Sponsor's personal bank statement.
15. I am not persuaded by Mr Spurling's submission that the judge failed to take in to account evidence or that he failed to consider the totality of the evidence. It is clear from the decision that the judge took into account all the evidence that was before him. He did not fail to refer to any of the evidence and there was no mistake of fact. He did not have any evidence from any of the people who had employed the Sponsor to provide cleaning services. He had her bank statements showing payments into her account. These did not correlate with any of the invoices. The accounts of ASR Services were not audited and therefore he attached little weight to them and to the information from HMRC.
16. The judge's findings were open to him on the evidence before him. There was no error of law in his decision of 22nd December 2016 and I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 6th October 2017

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 6th October 2017