



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02162/2017**

Appeal Numbers:

EA/02426/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 7 December 2017

Promulgated

On 9 January 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**ALADE TESLIM KOLAWOLE ABIODUN JOSE
BUKUNOLA ADESOLA ADEBAYO
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Olujinmi

For the Respondent: Mr Nath

DECISION AND REASONS

1. The appellants are citizens of Nigeria born in 1970 and 1977. They appeal against the decision by the respondent made on 8 February 2017 to refuse their applications for permanent residence cards on the basis that they are the family members of a EEA national under Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2016.
2. The respondent was not satisfied that adequate evidence had been provided to show that their sponsor is a qualified person who has been exercising Treaty Rights in the UK for a continuous five year period. Whilst

original P60's for the years 2007/08, 2008/09, 2009/10 and 2010/11 had been submitted, the evidence provided beyond that date was photocopied and, as a result, not accepted as evidence of employment.

3. They appealed.

First tier hearing

4. Following a hearing at Hatton Cross on 17 May 2017 Judge of the First-Tier Hussain dismissed the appeals. There was no appearance by or on behalf of the appellants and the judge proceeded to determine the appeal as a hearing in absence.
5. In brief findings the judge at paragraph [8] noted that having perused the grounds of appeal they were "*no more than generic. They appear not to engage the respondent's reasons for the decision*". There were also no attachments.
6. He concluded (at [10]): "*In my view, the Secretary of State was correct in requiring original documents. As explained in the refusal letter, photocopies cannot be assessed properly to establish their reliability.*"
7. The appellants sought permission to appeal on two grounds. First, that the judge erred by expecting them to attend the hearing when they had requested a consideration "on papers" only. Second, that the judge failed to take into account the appellants bundle of documentation.
8. In respect of ground one, Judge Chohan, who granted permission on 27 September 2017, stated that there was nothing to suggest that the First-Tier judge made adverse credibility findings on the basis of their non-appearance.
9. However, in granting permission, he noted the claim that a bundle had been sent to the Tribunal at Hatton Cross, and a receipt from Royal Mail confirmed delivery on 16 May 2017, the day before the hearing. It appeared that the documentation had not been placed before the judge. Had it been so his decision may well have been different.

Error of law hearing

10. At the error of law hearing before me the claimed bundle was still not on file, nor did the respondent have it.
11. Copies were obtained from Mr Olujinmi who also produced a Royal Mail tracker notice which, I was satisfied, indeed, showed that the bundle had been delivered to the First-tier Tribunal the day before the hearing. It appears to be lost. The photocopy bundle provided to me contained photocopy P60's for the five year period as well as other items. Mr Olujinmi said that the originals for the years complained of by the

respondent had been submitted in the bundle sent to the First tier Tribunal.

12. In the briefest submissions Mr Olujinmi sought a rehearing. Mr Nath was content to leave it to me.

Consideration

13. I considered that in determining the appeal without reference to the bundle there was procedural irregularity amounting to an error of law, albeit one through no fault of the First-tier judge.
14. The decision is set aside to be reheard. Such will allow the appellants the opportunity of approaching HMRC to get confirmation of the claimed employment. No findings stand.

Notice of Decision

The making of the decision of the First-tier Tribunal shows error of law. It is set aside.

In terms of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of

Practice Statement 7.2 the case is remitted to the First tier Tribunal for hearing afresh,

Before any judge other than Judge MB Hussain.

No anonymity orders made.

Signed

Date

Upper Tribunal Judge Conway