



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000736

First-tier Tribunal No:
EA/03131/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of July 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Karen Asongwe Binwie
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 9 July 2024

DECISION AND REASONS

INTRODUCTION

1. Neither the appellant nor her sponsor attended the hearing of the appeal listed before me. The appellant is plainly aware of the hearing. Notice of the hearing was sent to the parties on 3 June 2024. On 8 July 2024, the Tribunal received an email from the appellant's father, which simply states: "*I am very sorry to inform you that I will not be able to attend the hearing.*". There is no further explanation and no reasons are provided.

The Tribunal is not invited to adjourn the hearing to another date. In all the circumstances I consider it to be in the interests of justice and in accordance with the over-riding objective to proceed with the hearing of the appeal in the absence of the appellant, her sponsor, or any legal representative instructed by them.

2. The appellant is a national of Cameroon. On 11 December 2020 she made an application for an EEA Family Permit as the 'direct family member' of her father, Mr Julius Asongwe Ndifor ("the sponsor"), an EEA national who claims to be exercising Treaty Rights in the UK. The application was considered by the respondent by reference to Regulation 7 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 EEA Regulations") and refused on 6 February 2021. The respondent accepted there is evidence that the appellant's sponsor holds a German passport. The respondent noted that according to the application, the appellant's father is neither travelling with the appellant to the United Kingdom nor is she joining him in the United Kingdom. The respondent said:

"You have failed to provide evidence that your EEA national family member is a qualified person in accordance with Regulation 6 of the Immigration (European Economic Area) Regulations 2016. I am, therefore, not satisfied that your EEA national family member is residing in the UK in accordance with the Immigration (European Economic Area) Regulations 2016."

3. The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Clarke for reasons set out in a decision promulgated on 29 July 2021. The judge noted, at [5], that the sponsor attended the hearing and gave evidence by adopting his witness statement. The findings and conclusions of Judge Clarke are set out at paragraphs [6] to [9] of the decision. The Judge accepted the sponsor was in the UK on 1 February 2021. The Judge referred to the oral evidence of the sponsor at paragraph [7]:

"...The EEA national gave oral evidence after adopting his witness statement. He explained how he had two job offers in security but he needed a certificate before he is permitted to start. He pursued work opportunities in the care sector and did some shadowing but they also required him to undergo training which he found expensive. The sponsor registered to obtain a certificate in security and paid for his course which started in June 2021 and there is a receipt for the payment made on 28 April 2021 for a course run by Train2Inspire for Door Supervisor Training. In the void he undertook some volunteer work whilst trying to obtain paid employment but found the pandemic hindered the availability of work."

4. The Judge noted the sponsor was granted limited leave to remain under the EU Settlement Scheme on 16 November 2020. The judge also noted there is documentary evidence to support the job searches carried out by him. At paragraph [9] the judge concluded:

"Drawing the strands together, I conclude the EEA national has provided documentary evidence to support his own account of the steps he took to obtain work in the UK which (*sic*) and he has shown that he is more likely than not to be able to work once he has undertaken the training of door

security supervisor. I accept this account of the difficulties he has encountered because of the pandemic in realising his objective to work and I find that the Appellant has substantiated her claim and I allow the appeal.”

THE GROUNDS OF APPEAL

5. The respondent claims the Judge materially erred in law in finding that the sponsor is a qualified person for the purposes of Regulation 6 of the 2016 EEA Regulations. It is said the Judge overlooked the “91 day limit for job seekers” as set out in Regulation 6(1). Furthermore, the respondent claims the Judge failed to have regard to Regulation 6(7) which provides that a person may not retain the status of a jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged. The respondent claims the judge referred to evidence up to 20 November 2020, but there was no evidence that indicates any continuing efforts by the sponsor to obtain employment in the UK past that date. Additionally, it is said the judge erred in finding that there is a genuine chance of the sponsor being engaged in employment in the UK as he had not engaged in any employment since he was granted pre-settled status in November 2020.
6. Permission to appeal was granted by FtT Judge Bartlett on 19 October 2021. Judge Bartlett said:
 - a. the Decision does not set out under which category the sponsor is a qualifying person though it appears to have been argued and decided on the basis that the sponsor was a jobseeker.
 - b. the Decision does not make reference to the relevant period set out in Reg 6(1) of the EEA Regulations and there has been no consideration of when the relevant period started or ended – it has not been defined. As this period has not been defined it is arguable that Reg 6(7)(b) has not been given due consideration.
 - c. the Decision makes reference to a number of job applications made within a 10 week period until 30 November 2020. Thereafter there is reference to two job applications which have no date and an intention to do a course in June 2021 to accept the job offers. It is arguable that there has been an error in the application of Reg 6(7)(b) because of a lack of findings concerning the sponsors activities from 30 November 2020 onwards and a failure to apply the relevant test during this period.”

THE HEARING OF THE APPEAL BEFORE ME

7. As I have already set out, neither the appellant nor the sponsor attended the hearing. I acknowledge the appellant is unrepresented but there is no rule 24 response to the Notice of Appeal and in the absence of the sponsor, I am unable to discern the appellant’s response to the grounds of appeal and the observations made when permission to appeal was granted.
8. Mr Lawson adopts the grounds of appeal and submits the judge appears to accept the appellant was a ‘Qualified Person’ as set out in the 2016 EEA

Regulations but the judge does not identify whether that was as a 'jobseeker' or a 'worker', and how the relevant criteria is met.

DECISION

9. I have read the decision of Judge Clarke. The findings and conclusions are set briefly out at paragraphs [6] to [9]. EEA nationals who reside in the UK for more than 3 months must be exercising free movement rights and are classed as a 'qualified person'. The definition of a 'Qualified person' is set out in Regulation 6 of the 2016 EEA Regulations. There is nothing in the decision of the Judge that indicates that the appellant has been in employment and is therefore 'a worker'. The evidence that is referred to at paragraph [8] of the decision points to evidence that the appellant was seeking employment and thus was a 'jobseeker'. Regulation 6(1) states that a 'jobseeker' means an EEA national who satisfies conditions A, B and where relevant, C. In summary, the sponsor was required to establish that he entered the UK in order to seek employment, and to provide evidence that he is seeking employment and has a genuine chance of being employed.
10. The evidence of the sponsor was set out in his witness statement dated 3 June 2021. He claimed that he arrived in the United Kingdom in July 2020 with the aim of permanently living here. He set out in his witness statement the attempts that he had made to find employment. There is no evidence in the statement of the sponsor having secured any employment throughout the time that he has been in the UK. Judge Clarke referred to the sponsor's evidence in paragraph [8] of the decision. The appeal was heard on 12 July 2021 and the sponsor had by then been in the UK for approximately 12 months without any evidence that he had been able to secure employment. The judge referred to the evidence regarding attempts to secure employment between September 2020 and November 2020. Regulation 6(7) of the 2016 EEA Regulations makes it clear that a person may not retain the status of a job seeker for longer than the relevant period. An EEA national who has previously completed a period of 91 days residence as a jobseeker, but who ceased to have a right of residence in that capacity will only be able to remain a jobseeker if, *inter alia*, they can provide compelling evidence that they are seeking work and have a genuine chance of being engaged.
11. The difficulty with the decision of the FtT is that the decision fails to have regard to the steps taken, if any, by the sponsor to secure employment whilst he was initially in the UK during the first 91 days. He was granted limited leave to remain under the EU Settlement Scheme on 16 November 2020. The decision makes reference to a number of job applications made between September and November 2020. In his witness statement, the sponsor said that he had decided to register to obtain a certificate in security that he had paid for. The course was to start in June 2021. The judge referred to that course in paragraph [7] of the decision. The judge noted that there is a receipt for the payment for the course, but there is no reference to any evidence as to whether the sponsor had in fact attended and completed that course by the time of the hearing in July 2021. The

position in July 2021 appears to have been that the sponsor had not secured employment and was still a 'jobseeker'.

12. At paragraph [9] of the decision the judge said that the sponsor has shown that he is more likely than not to be able to work once he has undertaken the training of door security supervisor. The test however, because of the length of time the sponsor has already spent in the UK as a 'jobseeker', requires the sponsor to provide compelling evidence that he had been continuing to seek employment and of his having a genuine chance of being engaged. In the absence of any on-going evidence of the steps taken by the sponsor to secure employment between November 2020 and June 2021 and an absence of evidence regarding the satisfactory completion of the course the sponsor had paid to undertake or attempts to secure employment following the completion of the course, in my judgement, the judge failed to apply the correct test.
13. It follows that in my judgement the decision of the FtT is infected by a material error of law for the reasons set out in the grounds of appeal and must be set aside.
14. As to disposal I have considered whether I should re make the decision in the Upper Tribunal. In the absence of the sponsor and in the interests of fairness, I am satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh with no findings preserved.

NOTICE OF DECISION

15. The decision of First-tier Tribunal Judge Clarke promulgated on 29 July 2021 is set aside.
16. The appeal is remitted to the FtT For hearing afresh with no findings preserved.
17. The parties will be notified of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 July 2024