



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

Appeal Number: IA/00422/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 June 2014**

**Determination
Promulgated
On 3 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**ULISSES BORGES GUIMARAES
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer.
For the Respondent: The Appellant in person.

DETERMINATION AND REASONS

Introduction

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal hearing, which was decided on the papers on 14 March 2014. However, for ease of reference, the Appellant and Respondent are hereafter referred to as they were before the First-tier Tribunal. Therefore Mr Guimaraes is

referred to as the Appellant and the Secretary of State is referred to as the Respondent.

2. The Appellant is a male citizen of Brazil. On 14 August 2013 he applied for a residence card as confirmation of his right to reside in the UK as the spouse of an EEA national, Maria De Fatima Viera Moneno Guimaraes, a Portuguese national (the Sponsor), exercising Treaty rights in the UK. On 19 December 2013 his application was refused on the basis that he had provided insufficient evidence to establish that his Sponsor was exercising Treaty rights as defined by Regulation 6 of the Immigration (European Economic Area) Regulations 2006, as amended. This is because a telephone enquiry was made with Pals CS Ltd, the company named as the employer of the Sponsor on 19 December 2013 and it was confirmed that she was no longer employed by the company. As his Sponsor was no longer exercising Treaty rights, the Appellant's application was refused.
3. First-tier Tribunal Judge Pacey (the Judge) allowed the Appellant's appeal on the basis of payslips provided by the Appellant from Pals CS Ltd up to the period 11 September 2013 and for Rise Business Services for the period 28 August 2013 to 22 September 2013, finding that the Sponsor 'has at all material times been working and, then, exercising Treaty rights' [6].
4. The Respondent, in the grounds of application, submits that the Judge:
 - a. Materially misdirected herself in law in law pursuant to **Boodhoo and another (EEA Regs; relevant evidence) [2013] UKUT 00346 (IAC)** because the facts must be considered at the date of hearing rather than the date of decision and the Judge had referred to the date of decision as being the relevant date; and
 - b. Failed to give adequate reasons for her finding that the Sponsor has been exercising Treaty rights despite noting the lack of evidence as to the employment of the Sponsor at the date of decision; and, having noted inconsistencies in the evidence as to when the Sponsor started work at Rise Business Services Ltd but did not resolve those inconsistencies.
5. Permission was granted on both grounds.

The Hearing

6. Mr Kandola essentially relied on the grounds of application, submitting that at [6] the Judge referred to copy bank statements not extending to the date of decision, and the payslips for the period 18 November 2012 to 15 December 2013 not establishing that the Appellant's EEA national Sponsor was working to the date of decision. However, the Judge went on to find that the Sponsor was working and therefore exercising treaty rights

'at all material times'. He submitted that she had therefore failed to consider the facts at the date of hearing rather than the date of decision.

7. He also submitted that the Judge had noted the discrepancy in the evidence of the Appellant that his wife left Pals CS Ltd and started work for Rise Business Services in October but the letter from Rise Business Services confirmed that she had started working there in September not October and this discrepancy had not been resolved.

8. I drew Mr Kandola's attention to [6], in which the Judge stated:

"...The payslips for Pals CS Ltd extend to the pay date of 11 September 2013. The first payslip for Rise Business Services Ltd relates to the payment period from 28 August to 22 September 2013 but I note that that net pay is about half of that which is revealed in subsequent wage slips from that company, indicating that the Sponsor did not start at the beginning of that pay period. The wage slips provided, from both employers, appear to be reliable and I accept them at face value. They indicate, consistent with the Grounds of Appeal, that the Sponsor has at all material times been working and, then, exercising treaty rights."

9. I asked if this was not sufficient analysis of the discrepancy identified between the letter from Rise Business Services and the letter of the Appellant in which he stated that his wife had started work there in October. He stated that it appeared to be.

10. The Appellant stated that before the date of decision, he had sent to the Respondent payslips for his wife's employment with Rise Business Services. When he received the decision letter, he became aware that these had not been considered by the Respondent before issuing the letter. He had then contacted the Respondent and asked for these payslips to be returned to him and he sent them to the Judge.

11. In the file, there was a letter from the Appellant to the Tribunal dated 27 December 2013, in which he stated that nine days before the decision letter was issued he had sent two letters with four or five wage slips from the new employer and 2 photographs which he did not receive back. He had telephoned the Home Office to confirm that they had received them and it was confirmed that the first letter was received on 3 September 2014 and the second on 10 December 2013. His documents however were not returned to him when the decision letter was sent to him and he had contacted the Home Office and obtained the wage slips which he then sent to the Tribunal on 5 February 2014. It is clear that Rise Business Services was not referred to in the decision letter. He was asked if he had with him the payslips which he sent to the Tribunal to attempt to identify which documents were before the Judge, because she had clearly made reference to 'the first payslip from Rise Business Services' which implied that there were others before her.

12. He handed up payslips from Rise Business Services Ltd for the period 26 August 2013 to March 2014.

13. Following submission, I reserved my decision. The parties confirmed that with the additional evidence that I now had, which had been before the Judge, if I found there was a material error of law, I could remake the decision without the need for a resumed hearing.

Decision and reasons

14. As to background, at the date of application the Appellant's wife was working for Pals CS Ltd. The Respondent telephoned the employer on 19 December 2013 and was informed that she was no longer employed there, which resulted in the refusal of the Appellant's application for a residence card on the basis of the exercise of Treaty rights by his EEA Sponsor.
15. I find that the Judge did not err in law as submitted because:
 - a. Whilst the Judge referred to the date of decision at [6] and has not explicitly referred to the date of hearing for the purposes of the assessment of facts, it is clear that she had in mind the evidence submitted by the Appellant in relation to his wife's employment with Rise Business Services, which extended beyond the date of decision. It cannot be said that she did not assess the facts as at the date of hearing, which was 27 March 2014, when she clearly took into account the post decision evidence in relation to the employment of the Appellant's wife. There is no need to explicitly refer to the relevant date for the purposes of assessing the facts if it is clear that the correct date was in fact used.
 - b. The Judge did refer to the bank statements not extending to the date of decision so that it was not possible to identify if credits from the employer were deposited into the account. This was simply to establish the period of time for which the Appellant's wife was working for Pals CS limited, in view of the Respondent's assertion that she was no longer working there on 19 December 2013 (which was unsupported by evidence) and the discrepancy between the Appellant's own evidence as to when his wife started to work for Rise Business Services and confirmation from the latter for the actual start date.
 - c. Having received and considered the additional evidence, the Judge was satisfied that the Appellant was confused as to when his wife started to work for Rise Business Services; she analysed the evidence sufficiently to establish the start date, was satisfied that the payslips were reliable and concluded that these established that the Appellant's wife was exercising Treaty rights.
16. The Judge's findings were open to her on the evidence before her, they were not perverse or irrational, and no arguable errors of law are disclosed.

Decision

17. The determination of Judge Pacey contains no material errors of law and her decision must therefore stand. The Respondent's appeal is dismissed.

18. I note that an anonymity direction was not made and on the facts of this case, I see no reason why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Manjinder Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

No fee has been paid or is payable therefore no fee order is made.

Signed

Dated

M Robertson
Sitting as Deputy Judge of the Upper Tribunal