



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/06022/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th November 2014**

**Decision & Reasons
Promulgated
On 9th December 2014**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ROBERTSON

Between

**AICHA TRAORE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Bahja, Counsel instructed by Blue Trinity Legal
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant applied for a residence card on the basis that she is the family member of an EEA national, Mr Diakite, a French national. It is asserted that he is a qualified person under the Immigration (European Economic Area) Regulations 2006 (EEA Regulations) in that he is a worker

and that she is a member of his family under Regulation 7 and therefore she qualifies for a residence card. The Respondent refused her application on the basis that the evidence provided by her of her EEA Sponsor's employment was payslips which contained discrepancies and enquiries were made of his employer and these established that he was not employed by them.

2. The matter was listed for an oral hearing before First-tier Tribunal Judge Ruth (the Judge). The Appellant did not attend but was represented. The Respondent was not represented. The Judge found that at the date of hearing before him, being 29th August 2014, the Appellant's EEA Sponsor was not a qualified person.
3. The Appellant appealed against that decision and permission was granted by Judge Grant-Hutchison on 21st October 2014 on the basis that it was arguable that the Judge made a material misdirection of law when he referred to Section 85A of the Nationality, Immigration and Asylum Act 2002 when deciding what evidence he was going to consider and that he may also have erred in his definition of 'qualified worker' in reaching his decision.
4. I heard submissions from Mr Bahja acting for the Appellant and from Mr Wilding acting for the Respondent. Taking into account their submissions and the grounds of application, my findings are as follows:
5. In the grounds of application it is asserted that because the Judge referred to S 85A of the Nationality, Immigration and Asylum Act 2002 within his determination, the Judge was confused between "any evidence which it (the Tribunal) thinks is relevant to the substance of the decision" and "any matter which is relevant to the substance of the decision" and he therefore did not consider properly all the evidence before him. On that point I find that although the Judge referred to Section 85A of the 2002 Act at paragraph 4 of his determination he did in fact consider all the evidence that was before him. Additional evidence was provided of the EEA Sponsor's employment between 1st January 2014 and June 2014. The Judge shows no confusion as to the evidence that he should have considered. In fact one of the reasons why he dismissed the appeal was that there was a gap in the evidence provided by the Appellant in relation to his new employment so that no evidence was provided between June 2014 and the date of hearing.
6. Mr Bahja submits because the Judge was confused as to what evidence he was required to consider, he confused the question of whether or not the EEA Sponsor was a qualified person as a matter of EU law with the admissibility of evidence of employment postdating the Secretary of State's decision. In support of this submission he states that as a matter of EU law the Judge should have considered only whether the EEA Sponsor was a qualified person; not whether he was a qualified person at the date of hearing. He states that in deciding this issue, the Judge should have considered whether the period of employment between January and June

2014 was in fact merely ancillary or purely marginal and he did not take that into account. I think this confuses two points.

7. The first is that the Judge in fact found that the EEA Sponsor was a worker for that period of time (i.e, between January and June 2014). There was therefore no need for the Judge to consider whether or not that employment was purely ancillary or marginal. Consideration of that point was irrelevant for the purposes of the appeal. The second point Mr Bahja makes is that because the EEA Sponsor was in fact a worker for six months it was not open to the Judge to find that he was no longer a worker between June 2014 and August 2014 when the hearing took place. He states that it was wrong for the judge to require evidence that the EEA Sponsor was a qualified person down to the date of decision. This does not follow; the status of an EEA Sponsor can change, a residence card, even if issued, can be revoked on the basis that an EEA Sponsor is no longer a qualified person exercising Treaty rights. What Mr Bahja means, on the basis of his submissions at paragraph (ii) of the grounds of application, is that the Judge should have inferred that it was more likely than not that the Sponsor was in fact employed down to the date of decision on the basis of the six months employment between January and June 2014. On this point, the Judge considered all the evidence before him, which included the reasons given by the Respondent as to why a residence card was refused, i.e. discrepancies relating to evidence submitted for previous employment. There was evidence before the Judge that the Appellant had provided evidence that was unreliable in relation to the previous employment of the Sponsor for which a reasonable explanation was not offered at the hearing before him or in the submissions made on behalf of the Appellant. The Judge in the round was therefore entitled to take into account the lack of explanation in relation to previous employment and the lack of information provided up to the date of hearing and entitled to find that he could not draw an inference in favour of the Appellant. The findings that the Judge made were open to him on the evidence before him. They were not irrational or unreasonable and in fact permission was not granted on the basis that the Judge made irrational or unreasonable findings.
8. The grounds amount to no more than a disagreement with the findings of the Judge. Mr Wilding was right to point out that if evidence was now available that the Appellant's EEA Sponsor was a qualified person, the proper course of action was for a new application to be made.
9. Finally, by way of considering all the points raised, it seems to be implied in the grounds at paragraph (ii) that once an EEA Sponsor is shown to be a worker he cannot lose that status in EU law terms if his work is shown not to be marginal or ancillary. This cannot be right. What the EEA Regulations require is that the EEA Sponsor is a 'qualified person'. There are a number of ways in which an Appellant can be a 'qualified person' as set out in Regulation 6; this is not just as a worker. Regulation 6 recognises that the status of worker can be lost without losing the status of 'qualified person' and the Judge was alive to this possibility. At

paragraph 19 of the determination the Judge states that “there is no evidence before me that the Sponsor is temporarily unable to work or that he is duly recorded involuntarily unemployed”. He was therefore alive to the possibility that the EEA Sponsor may well be a qualified person under the provisions of the Regulations, albeit not a worker; however there was no evidence before him to establish that the Sponsor was a qualified person. I find that there are no material errors of law in the determination of Judge Ruth and his determination must therefore stand.

Decision

10. I dismiss the Appellant’s appeal.
11. An anonymity direction was not made by the First-tier Tribunal and on the facts of this case I see no reason why an order should be made pursuant to Rule 13 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Judge Robertson

Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

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

Signed

Date

Judge Robertson

Judge of the First-tier Tribunal