



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

Appeal Number: IA/08801/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 July 2014**

**Determination  
Promulgated  
On 29 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**CARLOS ANDRE DA CUNHA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr. P Nath, HOPO

**DETERMINATION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge B Lloyd dismissing his appeal against the respondent's refusal of his application for a Registration Certificate as a confirmation of a right to reside in the United Kingdom.
2. The appellant is a citizen of Portugal born on 9 November 1975. On 28 December 2013 he applied for a Registration Certificate as a confirmation

of a right to reside in the UK. He submitted with his application his Portuguese passport and an enrolment form from Harrow College dated 25 November 2013.

3. On 10 February 2014 the respondent refused the appellant's application under Regulation 6 in relation to Regulation 4 of the Immigration (EEA) Regulations 2006 on the grounds that (1) the ESOL course he was attending was not recognised by the Secretary of State as bona fide, as per Regulation 4 of the 2006 EEA Regulations; (2) he did not provide evidence that he holds comprehensive sickness insurance in the UK; and (3) he had not provided evidence by means of a declaration or such equivalent means, that he had sufficient resources not to become a burden on the social assistance of the UK during his period of residence.
4. The appellant's appeal was determined by the judge on the papers on 21 May 2004 as requested by him. The judge considered the documents which the appellant had produced to support his application and found that the appellant had provided no satisfactory evidence of his status as a "qualified person", namely, a student, exercising treaty rights.
5. The First-tier Tribunal Judge who granted permission was mystified as to why the judge did not make any reference in his determination to the documents which accompanied the notice of appeal. He said that the documents produced by the appellant for the appeal were on file and the accompanying envelope showed that they were posted together with the grounds of appeal. They included an original payslip which on the face of it appeared to show that the appellant worked for Transport for London. This was relevant evidence which although post-decision evidence was evidence the judge should have taken into account. The evidence was material, as if it were accepted, it would show that the appellant was a worker, the relevant date being the date of the hearing, not the date of the decision. The judge therefore arguably erred in law by failing to consider and make findings on the evidence produced by the appellant for the appeal. Alternatively, if for some reason the documents were not before the judge, there appeared to have a procedural irregularity.
5. At the hearing before me the appellant spoke through a Portuguese interpreter. He said he arrived in the UK in January 2013 and started working immediately at Nando's. He was now working for ISS FS Transport. He has worked throughout his period of residence in the UK. He confirmed that he did not inform the respondent that he was working when he made his application on 28 December 2013 or when he lodged an appeal against the respondent's decision on 19 February 2014.
6. I gathered from the papers, and confirmed by the appellant, that he submitted the letter from ISS dated 28 May 2014 and a copy of his payslip dated 7 February 2014 when he lodged an application to the First-tier Tribunal for permission to appeal against the judge's decision on 28 May 2014. Indeed, he stated in the application that he was providing a declaration from his employer to prove that he had sufficient resources in

the UK and a copy of his payslip. This means that the documents were not before the judge when he made his decision on 21 May 2014.

7. It means that the judge did not err in law on the evidence that was before him.
8. The judge's decision dismissing the appellant's appeal shall stand.

Signed  
Upper Tribunal Judge Eshun

Date