



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

Appeal Number: IA/19888/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**On 8<sup>th</sup> May 2014**

**Determination**

**Promulgated**

**On 13<sup>th</sup> June 2014**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**IRFAN JAVAID**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Stevenson, Counsel, instructed by McGill & Co Solicitors  
For the Respondent: Mr A Mullen, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Pakistan born on 13<sup>th</sup> October 1985.
2. The appellant sought the issue of a residence card in accordance with the provisions of the Immigration (European Economic Area) Regulations 2006

on the basis that he was the spouse of an EEA citizen exercising her treaty rights.

3. On 2<sup>nd</sup> June 2013 the respondent refused to issue such a registration card because the respondent was not satisfied that the sponsor was exercising treaty rights as a worker.
4. In support of the contention that his wife had been working, wage slips for the period 9<sup>th</sup> December 2012 to 20<sup>th</sup> January 2013 and an employer's letter dated 7<sup>th</sup> March 2013 from the employer Nadeem Ashraf of Newbridge Post Office, 64 Bridge Street, Edinburgh were produced.
5. The respondent in the refusal said as follows:-

“Upon assessing the wage slips and employer letter the Secretary of State has undertaken various checks to verify the employment, but has been unable to do so for the following reason:

On 11<sup>th</sup> April 2013 a telephone call was made to the employer who confirmed that your EEA family member had never worked for the company.

On contacting the manager of Newbridge Post Office, this department was informed that your EEA sponsor, Malvina Arlauskaite is not employed by them. On the basis of this evidence, this department must therefore conclude that the documentary evidence of employment of your EEA sponsor that you provided with this application must not be genuine and therefore inadmissible in evidence.”

6. A further matter was noted as follows:

“In addition it is noted that the council tax notice dated 7<sup>th</sup> December 2012 evidences that the property 1 (1F2) Loganlea Loan Edinburgh, EH7 6NH currently receives a single occupancy council tax discount which evidences that either the discount is obtained fraudulently or that you are not resident at this address as claimed in your application.”

Due therefore to that evidence and the lack of evidence of joint occupancy the application was refused.

7. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Scobbie on 29<sup>th</sup> January 2014.
8. The Judge looked at two sets of documents. The first set of documents was the material presented in support of working in the Newbridge Post Office, in particular of the letter dated 7<sup>th</sup> March 2013 and payslips in respect of that employment.

9. The Judge noted that the employer was a relative of the appellant and was concerned as to the content of the telephone call which was relied upon by the respondent. The payslips were totally pristine, which was also a matter of concern to the Judge. The sponsor also sought to indicate that she had been working for a period of time with another company. She produced a contract of employment which was unsigned by either party and payslips for the period 6<sup>th</sup> October to 10<sup>th</sup> November 2013. These payslips were found also to be in pristine condition, apart from all having been folded in exactly the same place.
10. For the reasons as set out the Judge did not find that the sponsor was employed as claimed in either capacity and therefore that there was no evidence that she was a worker.
11. Grounds of appeal were submitted against that decision, essentially complaining that the Judge had placed the burden of proof upon the appellant rather than upon the respondent. It was contended that the refusal letter itself was not evidence and that the respondent had provided no additional evidence or documentation to support the contention in the refusal letter. It was argued that the Judge had afforded inappropriate weight to the evidence from the respondent and not enough weight or consideration to the evidence as presented by the appellant and sponsor. Leave to appeal was granted on this matter and the matter comes before me in pursuance of that grant.
12. Mr Stevenson, who represents the appellant before me, also represented the appellant at the First-tier Tribunal hearing. Mr Stevenson's first submission was that the allegation contained in the refusal letter amounted to an allegation of fraud or dishonesty as such was an allegation which fell to be justified by the respondent. The principles set out in **AA Nigeria** noted the higher standard of proof. He submitted that all that was contained in the letter was an allegation and no evidence had been produced by the respondent to justify its accuracy or truthfulness. It was submitted that the Judge was in error in considering that it was for the appellant to produce evidence to disprove that allegation. Mr Stevenson also submits that it was an allegation which was impossible to deal with, thereby prejudicing the appellant still further.
13. It seems to me that Mr Stevenson seeks to place matters on an altogether unrealistic evidential basis. In the decision the respondent clearly indicates what enquiries were made to ascertain whether or not the sponsor worked as claimed. As it was a statement adverse to the interests of the appellant, clearly it had to be established the higher standard on the balance of probabilities. That having been done the burden then fell to the appellant to deal with the issue.
14. Far from being prejudiced in the presentation of the appeal the appellant and his legal representatives had had from 2<sup>nd</sup> June 2013 to 29<sup>th</sup> January 2014 to have sought clarification of that statement. A request could have

been made of the respondent for further and better particulars of that telephone call, particularly the name of the person that was spoken to in that call.

15. It is common ground that the appellant's uncle Nadeem Ashraf owned the Newbridge Post Office. It was the evidence of the appellant's wife, as set out in paragraph 14 of the determination, that she had been working for that uncle having been offered temporary work over the Christmas period. She worked from November 2012 to March 2013. Her evidence, as recorded in the determination, is that she worked for the appellant's uncle in the evenings so that it was possible that the employee who was spoken to did not know her. In addition the post office is separate from the shop. All that was needed of course was to request further details from the respondent as to the name of the person who had answered the telephone call.
16. Whether or not there was a distinction to be made between the "employer" or the "manager" is far from clear. It is a matter however that could have been clarified with ease by the appellant, particularly if the uncle had been called to give evidence as to his knowledge of or response to the telephone call. It was clear that on 11<sup>th</sup> April 2013 the sponsor was no longer working at that post office. The issue is however whether the statement "employer who confirmed that your EEA family member had never worked for the company" was accurate or inaccurate.
17. A letter was indeed produced from the uncle dated 7<sup>th</sup> March 2013 confirming that the sponsor had been employed with Newbridge Post Office since 3<sup>rd</sup> December 2012, holding the title of post office assistant and working on a part-time basis of sixteen hours per week. It would have been open to that witness to have dealt with the issue of the telephone call. The letter is silent on that point.
18. As I indicated to Mr Stevenson it was not a situation of the appellant being taken by surprise of developments at the hearing. There were months during which the allegation of the telephone call could have been dealt with. Given the centrality of the telephone call to the issue of credibility it is perhaps surprising that the uncle did not deal with that matter when he was asked to deal with others.
19. Within the context of that telephone call it is understandable why the Judge was concerned simply not to accept the wage slips upon their face. For the Judge the pristine condition of those wage slips was a matter of concern.
20. Where the pristine quality of the payslips to stand by themselves then arguably that is not a particularly cogent reason for rejecting them. For my part, having looked at those wage slips, there is something curious about them in the sense that there seems to be little evidence of any national insurance payments made by the employer or any tax being

charged. Such a situation stands in contrast to those that were produced relating to the claimed work for Industrious which seemed to have the hallmarks of normality about them.

21. It seems, however, and I so find that the Judge was entitled to look at the whole context of that working in deciding whether or not the wage slips could properly be regarded as a truthful statement of that which they purport to represent.
22. As I indicated to Mr Stevenson, perhaps the more important issue to be considered is whether or not, in looking at the evidence that was presented, the Judge was unduly influenced by the telephone call as to wrongly reject all the evidence, indeed whether the Judge had imposed an unduly high standard and burden upon the appellant in all the circumstances.
23. Mr Stevenson invited me to find that the evidence relating to the work for Industrious should have stood on its own and was compelling in its nature. Not only was there a contract of employment but also numerous payslips which seem in their form and substance to be entirely normal. He invited me to find that the Judge in rejecting those matters did so wrongly or unfairly in the circumstances.
24. It seems to me however that the Judge was entitled to look at those documents in the overall context of the other documents that had been presented. The contract of employment had not been signed by other parties. Once again as time had elapsed from the issue of the reasons for refusal letter, highlighting the concerns of the Secretary of State for the Home Department, it would not have been difficult either to obtain the signed copy of the agreement or indeed to have had some letter confirming the agreement or employment by the employer. The Judge considered that those wage slips were all pristine but significantly were folded in exactly the same place. The Judge commented in paragraph 25 as follows "given my concerns relative to the contract and payslips, again I did not accept that the appellant's wife had demonstrated, on the balance of probabilities, that she worked for Industrious." The Judge considered that the contract of employment lacked evidential value because it was unsigned by either party.
25. Mr Mullen, who represents the respondent, invited me to find that the Judge had properly considered all the evidence and that the Judge was entitled to raise her concerns as to the nature and quality of the documents that had been presented, particularly in the light of the fact that the appellant's credibility was to some extent impugned by the evidence of the telephone call.
26. The sponsor had indicated that she had worked previously in a restaurant but no evidence had been adduced in relation to that matter. Standing by themselves I do not consider that the pristine condition of the payslips was

a significant feature but taken together with the contextual concerns that have been expressed, in particular the lack of any response to the allegation that was made when such response could have been made, I find that the conclusions of the Judge were properly open to be made. I do not find therefore that an inappropriate standard and burden of proof was applied in this case. I consequently do not find there to be any error of law.

27. In the circumstances therefore the appeal before the Upper Tribunal is dismissed. The original decision shall stand namely that the appeal in respect of the EEA Regulations is dismissed.

Signed

Date

Upper Tribunal Judge King TD