



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21124/2014

THE IMMIGRATION ACTS

Heard at North Shields
On 24 September 2014
Given extemporaneous at the hearing.
Signed 1st October, 2014

Determination Promulgated
On 3 October 2014

Before

UPPER TRIBUNAL JUDGE RICHARD CHALKLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDELAZIM TAHER ABDELAZIM

Respondent

Representation:

For the Appellant: Ms H Rackstraw. Senior Home Office Presenting Officer
For the Respondent: The respondent in person. No representation

DETERMINATION AND REASONS

1. The Appellant is the Secretary of State for the Home Department to avoid confusion in this determination I shall refer to her as the "Claimant".
2. The Respondent is a citizen of Egypt who was born on the 2 April 1978. He made application for a grant of a family member residence card under the Immigration, European Economic Area Regulations 2006.
3. The Claimant's reason for refusal letter suggests that it has not been demonstrated by the respondent that the EEA Sponsor has been exercising treaty rights in the United Kingdom.

4. The Respondent appealed that decision taken by the Claimant on the 17 April 2014 and his appeal was heard by First-tier Tribunal Judge James without an oral hearing on the 16 June 2014 at Harmondsworth. Judge James noted that there was a single payslip in the name of the Sponsor which was dated the 3 June 2014, which referred to a BACS payment of £343.28 net. The cumulative figures confirm that only tax and national insurance to date are the ones that arise for the payslip. The payslip is evidence that the EEA Sponsor has been working and thus exercising her treaty rights. On that basis Judge James allowed his appeal.
5. The Claimant challenged the decision on the basis that the judge should have examined the facts as at the date of the appeal hearing and reliance was placed on the case of *Boodhoo and Another (the EEA Regs: Relevant Evidence)* [2013] UKUT 00346. The Claimant's grounds of appeal suggests that the Immigration Judge had no evidence before him to show that as at the date of the hearing on the 16 July 2014, the Sponsor was working and that the only evidence the Respondent had was a payslip for the Sponsor dated the 3 June 2014, which was more than one month before the hearing.
6. It was properly pointed out by the Presenting Officer before me that in fact the grounds of appeal contain errors of fact.
7. The first is that the hearing before the judge was on the 16 **June** 2014, not 16 **July** 2014 and since it was a hearing without an oral hearing the last payslip immediately before the hearing would have been that of the 3 June 2014, which was of course, the payslip which had been submitted by the respondent.
8. In the circumstances she suggested that the grounds of appeal failed to identify any error of law in the determination of First-tier Tribunal Judge James and invited me to produce a short determination recording that fact. I am grateful to her for that submission.
9. I believe she is correct, having examined the determination and the evidence submitted. I find that the determination of First-tier Tribunal Judge James does not contain any error on the point of law. This decision shall stand.

Richard Chalkley

Upper Tribunal Judge Chalkley