



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/22268/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

**On 7 November 2014
Oral Determination**

On 27 November 2014

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE F LINDSLEY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant
and

ALEXANDER NOSULYA
Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. The Secretary of State appeals with permission against the determination of First-tier Tribunal Judge Foudy promulgated on 17 July 2014 in which she allowed Mr Nosulya's appeal against the decision of the Secretary of State made on 22 May 2014 to refuse to grant him a residence card as confirmation of his right

of residence as a spouse of an EEA national, pursuant to the Immigration (European Economic Area) Regulations 2006.

2. The Secretary of State refused the application on the basis that there were discrepancies in the documentary evidence as to when he had commenced employment, the contract being dated 10 April 2012 but was signed on 4 April 2014. It was noted also that there was no other evidence such as bank statements, P60s or wage slips as confirmation of employment.
3. The respondent appealed against that decision, requesting that the matter be dealt with on the papers without an oral hearing. The matter then came before Judge Foudy on that basis and she concluded, having had regard to the contract of employment dated 10 June 2012 and a letter from Marriot Hotel in Park Lane dated 27 May 2014 that Mr Nosulya's wife was employed. The judge noted also that the contract of employment clearly states at paragraph [3] that the employment would commence on 24 June 2012 and therefore there was no inconsistency between the contract and the information provided by the respondent and his wife. Judge Foudy therefore concluded that the respondent's partner was exercising treaty rights and allowed the appeal.
4. The appellant sought leave to appeal on the basis that there was "clearly no up-to-date evidence such as wage slips or a letter from the employer to state that the sponsor was still employed by Marriott Hotels". The grounds also pointed out that there was no bundle from Mr Nosulya as Judge Foudy had noted.
5. When the matter came before us we noted that, contrary to what Judge Foudy had noted, there was in fact a bundle produced by the respondent received on 30 May 2014. It is unclear why Judge Foudy said that there was no bundle but it appears to have been a slip on her part as indeed is her dating of the decision as 24 January 2014. In any event, given her references to material therein, she must have considered it.
6. The bundle contains a letter, which contains the contract indicating, as Judge Foudy noted, that Mr Nosulaya's employment was to commence on 24 June 2012. It also contains a letter from her employer dated 27 May 2014 which confirms that she continues to be employed and has been since 24 June 2012 and that her position is permanent. In addition, there are attached a P60 for the tax year to 5 April 2014 indicating that he continues to be employed by Marriott Hotels; there is also a P60 for the preceding tax year which shows the same also.

7. Mr Tufan made no submission that these documents were not genuine and in the circumstances, we are satisfied that Judge Foudy was on the documents before her entitled to reach the conclusion that the respondent's wife continued to be employed at all material times. Accordingly, we find that the decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

Signed
2014

Date: 26 November

Upper Tribunal Judge Rintoul