Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/23354/2013
IA/23355/2013
IA/23357/2013
IA/23360/2013

THE IMMIGRATION ACTS

Heard at Field House
On 22 August 2014
Prepared 22 August 2014

Determination Promulgated
On 29 August 2014

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

J A
J U
J U
F H
(ANONYMITY DIRECTIONS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal, with permission, against a decision of Judge of the First-tier Tribunal Graham who in a determination dated 19 November 2013 dismissed their appeals against a decision of the Secretary of State to refuse to issue residence cards

© CROWN COPYRIGHT 2014

under Regulation 17 of the Immigration (EEA) Regulations 2006 as family members of an EEA national.

2. The first appellant is the wife of an EEA national and the other appellants are their children. They were refused residence cards on the basis that it could not be shown that the husband of the first appellant and the father of the other appellants was exercising treaty rights in Britain. The only evidence that was before the Secretary of State and before the judge was a letter from S & S Hair and Beauty Limited dated 22 November 2012 which stated that the sponsor had been employed since 8 November 2012 as a barber working 24 hours a week and a P45 which stated that he had left that employment on 14 June 2013. The sponsor had also produced evidence of two wage slips for 31 July and 31 August 2013 which appeared to have been issued by India Restaurants Limited showing a net pay of £643.76 per month.

3. The judge, with regard to the sponsor's claimed employment with S & S Hair and Beauty Limited, stated that she noted that the company had claimed to be a limited company and yet there was nothing on the letter provided to show the company registration number at Companies House and there were no contact details. She wrote:-

> "I have not found it credible that a commercially viable company would fail to provide a landline telephone number on their letter heading. I am satisfied that the P45 form can be completed by any person, there is no official stamp on the form. The sponsor has not submitted a contract of employment or wage slips or any other documentation relating to this employment. Taking all of these factors into account I find that I am not satisfied to the required standard that this documentation is reliable. In all the circumstances I do not accept that the EEA sponsor was employed by S & S Hair and Beauty Limited."

4. With regard to the sponsor's claim that he had been employed by India Restaurants Limited the judge wrote:-

> "The sponsor has not provided any other documentation to support this employment such as a contract of employment or an employer's letter detailing the hours and rates of pay for this employment. The wage slips state that the sponsor is paid in cash, therefore there is no trace of the salary in the sponsor's bank account. I consider that these two wage slips taken alone are unsatisfactory evidence of his employment with this company. In addition even if I were to accept these two wage slips as evidence of employment there is no indication as to whether this employment is temporary or a permanent position. I have considered the reliability of these wage slips by looking at the matter in the round. Having done so and bearing in mind the complete absence of other documentation such as a contract of employment or details of the extent and permanency of this employment I do not accept these wage slips as reliable evidence of the sponsor's employment."

5. The judge concluded that she could not be satisfied that the sponsor was exercising Treaty rights in the United Kingdom.

6. The appellants applied for permission to appeal claiming that the judge had failed to weigh the documentary evidence, she had not taken into account the P45 and P60 and that bank statements had been enclosed with the index to the bundle of documents which stated that the sponsor was receiving money in his bank account. The judge, it was claimed, had failed to "take into authenticity of the same". It was also stated that no weight seemed to have been given to Article 8 as it would be disproportionate to remove the family from Britain.

7. The application was considered by Judge of the First-tier Tribunal Osborne who noted the grounds of application. He described the determination as "otherwise careful and focused" but stated that the judge had not considered the appellants' Article 8 rights. He noted that the initial grounds of appeal had referred to the decision violating the appellants' rights under "UNHCR" but said that that was a typographical error. He therefore found that "it was arguable that the judge should have considered Article 8 rights".

8. It is not entirely clear from the grant of permission that that permission was only granted on the issue of the rights of the appellants under Article 8 of the ECHR.

9. At the hearing of the appeal before me there was no appearance by or on behalf of the appellants. Their solicitors, when contacted, made it clear that they wished the appeal dealt with on the basis of the papers before me. This I now do.

10. I agree with Judge Osborne that the determination is careful and focused and I consider that the judge properly considered all the evidence before her and reached conclusions which were clearly open to her on that evidence. She was entitled to find that the sponsor had not shown that he was exercising Treaty rights and therefore to dismiss the appeal under the Immigration Rules.

11. With regard to the issue of the Article 8 rights of the appellants I do not consider that these were argued or indeed were before the judge but the reality is that there is simply no evidence of what family life is being exercised by the appellants with the sponsor. Although there are statements on the file these are in largely identical terms where each of the appellants states that the sponsor had been paid in cash and had used the cash to buy food, cigarettes and other shopping. There is no detailed evidence of when the appellants arrived in Britain and I do not consider that there would have been sufficient evidence before the judge for her to have reached any conclusion other than that the appellants have not shown that they are exercising Article 8 rights with the sponsor here or that their removal would be an infringement of those rights.

12. In any event I note that they would have been required to pay a fee if they wished to apply for leave to remain on human rights grounds. They have not done so and the Secretary of State stated in the letters of refusal that there was not an Article 8 application before her. It is clearly arguable that there was therefore not only no application for leave to remain on human rights grounds against which the

appellants could have appealed but that they indeed did not attempt to do so in that Article 8 of the ECHR or indeed any rights under the ECHR were not mentioned in – the grounds of appeal. In any event, as I have said, it is clear that there was no evidence before the judge that could have led her to find that the removal of the appellants would be disproportionate.

13. I therefore find that the determination of the judge contains no material error of law and therefore her decision stands.

Decision.
These appeals are dismissed on both immigration and human rights grounds.

Signed Date

Upper Tribunal Judge McGeachy