



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

Appeal Number: IA 28071 2013

THE IMMIGRATION ACTS

Heard at Field House

On 28 April 2014

Determination

Promulgated

On 25th June 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MRS ESTHER AMARACHUKWU NWANERI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant did not appear and was not represented

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a female citizen of Nigeria against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State to refuse her a residence card as the family member of an EEA national.
2. The appellant did not appear before me. A message was given to my clerk from her former solicitors indicating that they were not acting for her but that the appellant would represent herself at the hearing before me. She did not appear but notice of hearing was sent out on 1 April 2014, and, given the solicitors' comments, I was satisfied that she had proper notice of the hearing in accordance with the Rules and I continued in her absence.
3. Mr Duffy had to concede that the First-tier Tribunal had made an error of law. The core problem in the application is that the Secretary of State did not believe the evidence that the EEA relative of the applicant was in fact employed as claimed. The Secretary of State was asking herself if the EEA

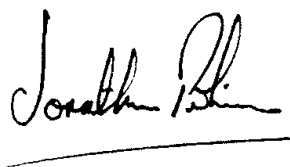
national was employed by Horizon Cleaning Services which had been identified as an employer on an earlier occasion.

4. However, this application was not based on employment at Horizon Cleaning Services but on employment with Biottha Limited.
5. There is documentation before me in the form of an employment letter, payslips and matching bank statements indicating that for at least some of the time the sponsor was employed by Biottha Limited. The First-tier Tribunal Judge appreciated that that was the sponsor's case but went on to say that the skeleton argument did not explain

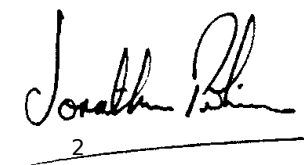
“how any of the evidence in the appellant's bundle explains the fact that the respondent had been unable to contact the employer at the number provided by the sponsor, why that number was ringing out as unobtainable why the phone number provided was linked to several different companies and also why the address given for that company was a residential property”.

6. Given that the Secretary of State was concerned with Horizon Cleaning Services rather than Biottha that criticism rather loses its force, and the First-tier Tribunal Judge regrettably did not apply his mind to the actual issues in the case. The reasons given for being unimpressed by the evidence were clearly misconceived.
7. It follows therefore that I set aside the decision of the First-tier Tribunal. This is the sort of case where normally the Upper Tribunal would wish to make a decision itself. It would save time. However, I decline to do that on this occasion. The appellant is not here to argue her case. I think it would be helpful to the Tribunal if she did attend although of course she cannot be made to attend. Further Mr Duffy had not seen a copy of the appellant's bundle and has therefore not been able to initiate any checks or form a view on the evidence provided and he wanted an opportunity to do those things.
8. As the First-tier Tribunal did misunderstand the case completely it is appropriate to go back to the First-tier Tribunal and I so direct. I also record that it is my intention this morning to ask my clerk to make a copy of the appeal bundle and give it to Mr Duffy so the Secretary of State should be in a perfectly good position to review the case when it finds its way back to the First-tier Tribunal.
9. The decision of the First-tier Tribunal is set aside and the appeal allowed to the extent that it is remitted to be heard again at the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 24 June 2014



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