



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/41174/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 May 2014
Oral determination given following the hearing

Determination Promulgated
On 19th June 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR TRAIAN MARCEL CEASCAI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation, appeared in person
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal brought by the appellant against the decision of First-tier Tribunal Judge Walters, promulgated on 5 March 2014 following a hearing at Taylor House on 10 February 2014 whereby he dismissed the appellant's appeal against the

respondent's decision to remove him to Romania pursuant to Section 10 of the Immigration and Asylum Act 1999 as a person who does not have or has ceased to have a right to reside in the UK. The basis of this decision was that the appellant had failed to show that he was a qualified person entitled to reside in this country in accordance with Regulation 6 of the Immigration (European Economic Area) Regulations 2006.

2. Within that Regulation a "qualified person" is defined within Regulation 6(1) as including "(b) a worker". In his determination Judge Walters acknowledged that the appellant had produced sets of photographs which showed him doing roofing, brickwork and tiling and making driveways amongst other tasks and as the judge found at paragraph 13, "he produced two sets of photographs which, I found, clearly showed him undertaking these tasks". He also accepted that he had been paying his national insurance contributions. As the judge put it at paragraph 18 of his determination, "I found that there was adequate evidence that the appellant had been paying his NI contributions".
3. However, the judge was not prepared to accept that he was a "worker" for the purpose of these Regulations for reasons which he set out at paragraph 18 of his determination as follows:

"I found that in order to prove that one is a worker, one must prove that one is in legitimate employment, paying the requisite income tax and national insurance (NI). [Although] I found that there was adequate evidence that the appellant had been paying his NI contributions, [there was] no evidence whatsoever that he had been paying income tax. I therefore did not find that he was a worker".

4. Before me, on behalf of the respondent, Mr Jarvis accepted that the definition of worker that the judge was adopting here was not in accordance with the Regulations and nor was it in accordance with the decision of this Tribunal in *Begum (EEA - worker - jobseeker) Pakistan* [2011] UKUT 00275.
5. There was a further difficulty in this case in that it is the appellant's case as set out in his grounds of appeal that he had submitted evidence to the Tribunal which either was not considered by the judge or which had not been put before him. As the judge does not state within his determination (and it would have been preferable if he had) just what evidence was before him it cannot be said with any certainty precisely what evidence he had. It is certainly the case that the appellant did say that he had been working and he produced evidence such as the photographs of the work he was doing and the evidence relating to his national insurance which supported this.
6. Before me the appellant also produced evidence in the form of a Post Office receipt dated 29 January 2014 which was some two weeks or so prior to the hearing before Judge Walters from which it is apparent that he posted a substantial body of documents to the respondent at Angel Square. It is accordingly in my judgment more likely than not that he did submit documents to the Tribunal as he says and it

would appear that not only did the judge make a material error of law in considering what was a “worker” in the way that he did but there was a procedural irregularity in the proceedings such as to amount to an error of law. After considering the documents which were provided by the appellant for this hearing Mr Jarvis on behalf of the respondent very fairly accepted that there was sufficient evidence to suggest that there probably had been a procedural irregularity and he also, as I have noted above, accepted that Judge Walters’ definition of “worker” for the purposes of these Regulations was simply wrong. Accordingly I now have to remake the decision and I shall do so shortly. Before so doing, however, it is right that I make some reference to the underlying reason why in this case the respondent considered it appropriate to make a decision to remove this appellant on the basis that he was not a qualifying person because this is an unusual decision to make.

7. The unpleasant fact in this case is that since arriving in this country this appellant has been convicted of what this Tribunal regards as serious criminal offences in that he has no less than three convictions for driving with excess alcohol while uninsured and associated offences such as failing to surrender to custody at that point in time and also driving whilst disqualified. The offences were considered so serious that in respect of two of them he was sentenced to periods of imprisonment. That, however, as the judge acknowledged at the hearing in front of the First-tier Tribunal, is not strictly relevant to a consideration of whether or not the appellant is a qualified person for the purposes of the Regulations but it does explain why if he was not the respondent considered it appropriate to remove him. I should add that the appellant has not been in the country for a sufficient length of time to have acquired any permanent right of residence here and unless his behaviour improves it may well be that subsequently the respondent will have no alternative other than to decide to remove him in compliance with Regulation 21 of the 2006 Regulations. That said I now turn to remake the decision. Again, although this is not strictly relevant to the decision it is perhaps appropriate to record that, even were this appellant now to be removed, unless he is removed for reasons and in a way which would bar his subsequent return the only effect of removal would be that he would suffer the inconvenience of having to get on a train or bus or boat back into this country because there would not appear to be any restriction on his so doing. However, again, this is not strictly relevant to the decision.
8. Again, with commendable fairness Mr Jarvis, having considered the material produced by the appellant at this hearing which included a document showing that he has actually paid some national insurance and also the Inland Revenue returns which were submitted which showed that in a seven month period up until April 2013 he had earned something over £8,000 but had not had to pay any tax because after his expenses had been taken into account his taxable income was only around £5,500 or so for the year, accepted that the appellant was indeed a “worker” and thus a qualified person for the purpose of the Regulations. I would merely add that Judge Walters in his determination without being specific as to the figures he had in mind had attempted to dismiss the appellant’s account on the basis that if he had been working as long as he said he was he should have earned sufficient money to pay income tax and so the fact that he did not showed that his figures could not be

believed. Judge Walters did not apparently take account of the fact that he only worked for seven months or so in the year ending 5 April 2013 and also that before his earnings were calculated he would have to deduct those expenses which legitimately could be deducted. Although not high I do not consider that receipts of £8,500 in a seven month period, as is shown on his tax returns, are so low as to show that his figures cannot be trusted. As Mr Jarvis accepts that the appellant was a worker for the purposes of the Regulations and I agree that on the evidence this is established it follows that this appeal must be allowed and I so find.

Decision

I set aside the determination of the First-tier Tribunal and substitute the following decision:

The appellant's appeal is allowed under the 2006 EEA Regulations.

Signed:

Date: 18 June 2014

Upper Tribunal Judge Craig