



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/41225/2013

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

Determination
Promulgated

On 16th July 2014

On 4th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TAIROU SOUCOUNA

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Mali born on 10th November 1980. His appeal against the Respondent's decision of 25th September 2013 refusing to issue a residence card as confirmation of a right of residence was allowed by the First-tier Tribunal on 19th April 2014. The Secretary of State appealed.

2. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 3rd June 2014 on the grounds that it was arguable that First-tier Tribunal Judge Fox has erred in law in allowing the appeal under Regulation 6 of the Immigration (EEA) Regulations 2006 when there was insufficient evidence to show that the EEA Sponsor was exercising Treaty rights.
3. The Appellant did not attend the hearing. The Appellant's representatives sent a fax on the morning of the hearing stating that notice of hearing was received on 16th June 2014 and they did not have sufficient time to prepare. The Appellant had failed to put them in funds to enable them to instruct counsel; they requested an adjournment if the decision was to be remade.
4. It was clear from the court file and the determination that the Appellant's bundle dated 13th December 2013 had not been considered by the First-tier Tribunal. Mr Bramble submitted that there was an error of law in the determination because the Judge had failed to show on what basis the EEA Sponsor was exercising Treaty rights. There was no evidence of working, merely an intention to set up self-employment. The Respondent had refused the application and there was no further evidence before the Judge.
5. Mr Bramble submitted that the decision should be remade taking into account the Appellant's bundle of further evidence. This evidence amount to a letter from the EEA Sponsor's employer, a contract and two payslips. It was insufficient to show that the EEA Sponsor was working. There were no bank statements to show that the EEA Sponsor was being paid in accordance with the payslips. The contract was not signed by the employer and did not show the EEA Sponsor's address. There were no witness statements from the Appellant or the EEA Sponsor. The Appellant had failed to provide sufficient evidence to satisfy the EEA Regulations. Mr Bramble opposed the adjournment request because there was no reason why the Appellant could not attend the hearing.

Discussion and conclusions

6. I find that the First-tier Tribunal made an error of law in allowing the appeal under the EEA Regulations because there was insufficient evidence to show that the EEA Sponsor was exercising Treaty rights. The evidence before the Judge amounted to:
 - (i) two letters from HMRC dated 20th and 22nd May 2013; one relating to a proposed schedule of payments of national insurance contributions and the other confirming that the EEA Sponsor had contacted HMRC with a view to registering for self assessment;
 - (ii) a letter from an accountant, dated 3rd June 2013, stating that the EEA Sponsor was a self-employed cleaner and her accounts were up to date;

- (iii) a bank statement for the period of 1st March to 7th May 2013.
7. I find that this evidence was insufficient to show that the EEA Sponsor was working as a self-employed cleaner. The bank statements pre-dated the request to register as a self-employed person and the provenance of the deposits in the account was unknown. The letter from the accountant was vague. It did not indicate when the EEA Sponsor started working as a cleaner or her hours or rates of pay. There were no business accounts attached to corroborate the claim that the EEA Sponsor's affairs were up to date. The letters from HMRC indicated an intention to become self-employed.
 8. Accordingly, I find that the decision of the First-tier Tribunal contained a material error of law and I set the decision aside. I refuse the Appellant's request to adjourn the remaking of the decision because the Appellant has failed to establish a good reason for his non-attendance. I am satisfied that he was aware of the hearing because it was served on his representatives on 16th June 2014 and they have confirmed that the Appellant was unable to provide them with funds to instruct counsel. There was no reason why the Appellant could not attend the hearing himself. The Appellant has failed to show that the appeal could not otherwise be justly determined.
 9. I have considered the documents in the Appellant's bundle dated 13th December 2013. The letter dated 29th November 2013 states that the EEA Sponsor has been an employee since 16th October 2013. There is unusual spacing around the EEA Sponsor's name and the date. Copies of two payslips were submitted indicating that payment was made by bank transfer. There were no bank statements to corroborate these two payments. The contract was signed by the EEA Sponsor, but not her employer. It was dated 17th October 2013 and was therefore inconsistent with the employer's letter. The pay schedule indicated that the above pay rates applied until 1st October 2012. Looking at the evidence in the round, I find that the Appellant has failed to show on the balance of probabilities that the EEA Sponsor was working for Healthvision as carer or that she was working as a self-employed cleaner.
 10. The Appellant has failed to show that the EEA Sponsor is exercising Treaty rights in accordance with Regulation 6 of the EEA Regulations. In the circumstances of this case, the refusal of a residence card did not breach Article 8 of the European Convention of Human rights. It was open to the Appellant to submit a further application and provide sufficient evidence to satisfy the Regulations.
 11. I find that the Judge erred in law in allowing the appeal under the EEA Regulations 2006 and I set the decision, dated 19th April 2014, aside and remake it as follows: The Appellant's appeal against the refusal of a

residence card is dismissed.

Deputy Upper Tribunal Judge Frances
21st July 2014