Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/43347/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2014
Oral Determination

Determination Promulgated
On 1 August 2014

Before

THE HONOURABLE LORD MATTHEWS,
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE RINTOUL

Between

SIKRU TOYIN OSENI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Mayall, promulgated on 10 March 2014, in which he dismissed the

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appellant's appeal against a decision by the Secretary of State to refuse his application for a residence card as confirmation of a right to reside in the United Kingdom as the spouse of an EEA national said to be exercising treaty rights here.

2. The appellant's case is that he is married to an EEA national ("the sponsor") who it is said runs her own business. As evidence of that he provided to the Secretary of State income tax returns, national insurance contribution demands and bank statements.

3. In her refusal letter of 14 October 2013, the Secretary of State concluded that the evidence was not sufficient as the appellant had failed to submit evidence of work carried out, such as invoices and statements, audited accounts, business bank statements showing payments received or promotional material that the EEA family member had produced in order to generate work.

4. An appeal was lodged against that decision and the appellant requested that the matter be dealt with on the papers without an oral hearing. The matter then came before First-tier Tribunal Judge Mayall, who had before him, in addition to the material supplied to the respondent, a bundle of material running to some 44 pages. This again contained tax calculations, self-assessment statements and bank statements. It also contained two witness statements from the appellant and his wife which set out that they are lawfully married and that the wife works as a self-employed party planner.

5. Judge Mayall noted that the burden was on the appellant to show that he met the requirements of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). He notes also [9] that the refusal letter had indicated to the appellant and sponsor that they had failed to submit evidence of work being carried out and this was still the case. He accepted that a self-assessment return has been produced but considered that is not in itself evidence of work being done, this being especially so with the effect of the submission results in such a small amount of tax payable. In this case it was under £100. He said:-

   > "I find it extremely difficult to believe that there can be no other evidence of this events planning business. The appellants were on notice of the need to produce some evidence of work actually being done. They have not done so".

   On that basis he was not satisfied the sponsor was exercising treaty rights, and thus did not meet the requirements of the EEA Regulations.

6. The judge then also went on to consider Article 8 and concluded that it would not be a disproportionate interference in his rights to remove him from the United Kingdom.

7. The appellant then sought permission to appeal on the grounds that:

   (i) the judge was not entitled on the basis of the documents supplied to him to conclude that the sponsor was not exercising treaty rights;

(ii) that the judge had failed to take into account a book of invoices submitted with the notice of appeal;

(iii) the judge's reasoning that the amount of money paid in tax indicated minimal economic activity was not a relevant matter to be taken into account as the EEA regulations did not provide for any specific level of income.

Permission to appeal was granted by First-tier Tribunal Judge P J White on 14 April.

8. When the matter came before us there was no appearance for or on the behalf of the appellant.

9. On consideration of the court file it appears that in both the notice of appeal to the First-tier Tribunal and the notice seeking permission to appeal to the Upper Tribunal, the appellant gave his address as care of OA Solicitors, 303 Hoxton Street, London, N1. No alternative address has been given. It is unclear to us why no proper correspondence address for the appellant was given. In any event, in a letter dated 29 May 2014 OA Solicitors wrote to the Tribunal stating that they have no further instructions from the appellant, have ceased to represent him, and will not accept any further correspondence to him, but no alternative address for the appellant was.

10. We consider that in the circumstances it was incumbent upon the appellant, who has at this point instructed solicitors to pursue the appeal to the Upper Tribunal, to keep in contact with the Tribunal.

11. We remind ourselves of rule 2 (4) of the Tribunal Procedure (Upper Tribunal) Rules requires the parties to co-operate with the Tribunal in furthering the overriding objective which is to enable the Tribunal to deal with cases fairly and justly which includes, we consider, avoiding delay. We consider that in the circumstances the appellant should have informed the Tribunal of a proper address at which he could be contacted. We are satisfied also that in the circumstances proper service of the notice of hearing has been given pursuant to Rule 12.

12. Turning to the decision of Judge Mayall we consider that he give adequate reasons for concluding that the appellant had not shown that the sponsor was self-employed. In reality, the challenge to the Judge's decision is about the weight to be attached to evidence, which was a matter for him. It was open to him to conclude that a tax return which, as in this case, shows only that roughly £89 was payable in the most recent tax year and a slightly lesser amount in the tax year was not evidence of sufficient weight to demonstrate that the sponsor was self-employed, particularly when attention had already been drawn to the insufficiency of the evidence that the sponsor is in business. Had there been, for example, a tax return showing a tax liability of the order of £10,000 or £20,000 it would be different; payment of that amount of tax is strong evidence of significant income.

13. It was open to the judge to find that it was somewhat less than credible for there to be no evidence whatsoever relating to a party planning business. As Ms Isherwood

submitted and as the judge noted, the appellant had been put on notice of additional material which was required. They chose not to do so and there is no evidence before us that any booklet of invoices were submitted. There certainly appears to be no covering letter to that effect, but there is one in respect of the other bundle.

14. The Judge's decision was one open to him on the material before him, and accordingly we are not satisfied that the determination of First-tier Tribunal Judge Mayall involved the making of an error of law with respect to his conclusions that the appellant had not shown that the sponsor self employed and thus a qualified person for the purposes of the EEA regulations; and, that the appellant was not entitled to a residence card as confirmation of his right of residence.

15. Turning briefly to the challenge to the Article 8 finding, we consider that the grounds of challenge to that failed properly to engage with the circumstances of this case or the judge's findings. We note that at paragraph 2.2 of the grounds reference was made to **Kugathas** which is of questionable relevance in the facts of this case, given that there appears to be no doubt whatsoever in anyone's mind that family life exists, on the facts of this case, between the appellant and his wife.

16. The grounds set out at paragraph 2.3 made little sense whatsoever and consist in the greater part of a quotation from the well-known case of **Ridge v Baldwin** **[1964]** and references to the principles of natural justice. Quite why this is relevant in a case where the judge has clearly looked at the evidence as shown by his determination, is unclear.

17. We consider that the grounds of appeal challenging Article 8 of the decision fail to identify any error of law on the part of the judge. We are satisfied that he gave adequate and sufficient reasons for his conclusion that he would not be in breach of the United Kingdom's obligations pursuant to Article 8 to remove the appellant from the United Kingdom.

18. For these reasons therefore we are satisfied that the appellant's appeal against the Secretary of State's decision must be dismissed and we uphold the decision of First-tier Tribunal Judge Mayall.

Signed Date

Upper Tribunal Judge Rintoul