



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

Appeal Number: IA/44343/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11th July 2014

**Determination
Promulgated**

On 05th Aug 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**TASKEEN HAIDER
(NO Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood instructed by Maxim Law

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan and born on 27th September 1986 and on 28th March 2013 he applied for a residence card as confirmation of his right to reside in the United Kingdom under Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) as the spouse of

Katarzyna Jolanta Pecko, a Polish national (the sponsor). The sponsor must be exercising treaty rights in accordance with Regulation 6 of the EEA Regulations.

2. The respondent refused the appellant's application on 18th October 2013 in the following terms.
3. The respondent noted that the appellant had claimed that his EEA sponsor was self-employed and provided a letter from the HMRC dated 14th March 2013, a Gumtree advert acknowledgement and an accountant's letter dated 27th February 2013. The respondent noted that the letter from the HMRC showed the sponsor was issued with a national insurance number on 31st January 2013 thus she had come to the UK shortly beforehand. The appellant married the sponsor on 11th February 2013 but it was noted that the marriage certificate was incomplete and did not record the age of the appellant or the EEA sponsor and referred to the EEA sponsor as a homemaker not a cleaner. The sponsor placed an online advert as a domestic cleaner through Gumtree on 19th February 2013.
4. The accountant's letter of 27th February 2013 recorded the sponsor as registered as a sole trader providing services to various private people and businesses. The respondent found the appellant had failed to provide any evidence of work carried out such as recent invoices and statements, audited accounts or business bank statements showing payment received and thus had failed to provide sufficient evidence to demonstrate the EEA sponsor was economically active in the UK as self-employed under Regulation 6 of the EEA Regulations.
5. First-tier Tribunal Judge R G Handley dismissed the appellant's appeal under the EEA Regulations and further to the Immigration Rules on 3rd February 2014.

Application for Permission to Appeal

6. Application for permission to appeal was made on the basis that it was argued to the First-tier Tribunal Judge that audited accounts were not required by a small business owner and the judge had wrongly referred to the paid NI contribution bill by saying it was due.
7. The judge had refused to accept the cash receipt issued to the customer by saying that "*these documents are not proper invoices*". It was explained to the judge that the sponsor was doing small business issuing receipts to customers and putting her personal account as she is permissible to use the personal account for self-employed business. She did not have a limited company.
8. The applicant's sponsor regularly paid tax if required and paid national insurance contributions and received regular money by cash from her cleaning service.

9. The applicant's wife was a qualified person further to the EEA Regulations.
10. First-tier Tribunal Judge Cruthers dismissed the application for permission to appeal. He stated that on the evidence *"It is difficult to think that any First-tier Tribunal Judge would have concluded that the claim as to the appellant's EEA sponsor exercising treaty rights had been sufficiently established as per 11 to 16 of the determination and the grounds did not identify any arguable error of law."*
11. The application for permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge Kopieczek stated that he considered it arguable that the judge's reasons for rejecting the evidence of self-employment were inadequate. Although the documents from HMRC did not indicate the nature or extent of self-employment they did show some self-employed activity. It was arguably unclear why the bank statements which showed cash deposits were not supportive of the claim and in relation to the invoices it was noted that they did not bear the sponsor's name but they were it would appear submitted by her.
12. Upper Tribunal Judge Kopieczek granted permission to appeal.

The Hearing

13. At the hearing Mr Maqsood stated that the reasons given by the judge in dismissing the appeal were inadequate and the evidence before the First-tier Tribunal was not properly considered and no proper weight was attached to it.
14. Mr Maqsood agreed that the tax return was not before the First-tier Tribunal Judge and although it had been included in the evidence before me it should be disregarded.
15. The first invoice was issued on 27th February 2013 and thus the appellant had not had any income until that date. The judge referred to the HMRC letter for self-assessment dated 14th March 2013 and to the letter 30th March 2013 from the HMRC regarding national insurance contributions but similarly and as with the 381 letter the nature and extent of the activity was not accepted. The HMRC letter dated 14th March 2013 showed that the sponsor had attempted to register for self-employment shortly before she submitted the application, although the judge did not accept that this showed the nature and extent of any economic activity the accountancy but the 381 letter did refer to the activity and the extent of the activity was shown by the bank statements and invoices.
16. Further the national insurance contributions' letters of 30th March 2013 and 5th October 2013 showed that the sponsor was paying national insurance contributions and showed that she was self-employed. There was a further HMRC letter dated 25th April 2013 which was rejected

because this did not indicate the nature and extent of activity that the reasons given were inadequate.

17. The bank statements were very important as were the invoices. It appeared that the bank statements were rejected because the account was overdrawn and there were cash deposits made into the account which it was stated did not support the claim she was self-employed but they were not relevant reasons. The invoices corresponded with deposits in the bank account. There was no reference to the sponsor but there was her signature on the invoices. They were all handwritten but bearing in mind the background and education and work of the sponsor this was not surprising. Taken together the documents showed that she was self-employed. There was a reference to the marriage certificate with the sponsor as a homemaker but this was given undue weight by the judge.
18. Mr Walker stated that the first cash deposit was made on 26th February whereas the invoice and receipt was dated 27th February 2013, the day after the deposit. Judge Handley had considered the documentation at paragraph 14 and only three of the invoices predated the application which was made on 28th March. On the evidence the judge had it was clear at paragraph 12 that he had considered the letter from 381 and he had considered all the bank statements. There was no material error in his findings and they were open to him.

Conclusions

19. The judge clearly stated at paragraph 16 that he had considered all the evidence and that he was not satisfied that the appellant had shown to the appropriate standard that the EEA sponsor was economically active in the UK as a self-employed person. Judge Handley addressed all of the relevant evidence such as it was and noted contrary to the submissions the Gumtree advert acknowledgement. The judge correctly pointed out that the 381 Accountancy and Bookkeeping Services' letter dated 27th February 2013 (and which I note in its first version was not dated) simply confirmed that the EEA sponsor was registered as a sole trader providing cleaning services and that there was no further information regarding the EEA sponsor's income if any from her business activities in that letter. It was open to the appellant to submit further documentation from "381 Accountancy and Bookkeeping Services" in relation to her accounts and she did not do so. The judge cannot work on evidence that is not before him.
20. Further he referred to the letters from the HMRC but these are letters in relation to the submission of a self-assessment documentation or registration as self employed. I note that there was no supporting self-assessment documentation, such as a tax return, submitted to the tax authorities to show earnings, and this could have been undertaken any time from the close of the 2012 to 2013 tax year, which is in April 2013, onwards and submitted up to the time of the hearing on 23rd January 2014. This was not done and thus was not before the judge, even though the

Upper Tribunal bundle indicated it was. The tax return could **not** have been put before the judge because it was not dated until 7th February 2014 (this Mr Maqsood readily acknowledged). The judge clearly placed little emphasis on the national insurance contribution letters [determination paragraph 12] and noted a further letter of 25th April 2013 as a reminder to complete a tax return. As the judge rightly stated “None of these letters give any indication as to the nature and extent of the EEA sponsor’s economic activities”. Even the national insurance contribution payment letter of 30th March 2013, which the judge took into account, does not indicate the amount earned by the sponsor.

21. The judge then turned to the bank statements which related to the EEA sponsor and noted that they covered a period from 22nd January 2013 to 30th October 2013. He stated that the bank statements “Do not support the claim that the EEA sponsor is engaged in business activity”. The point that the judge made out at paragraph 14 was that most of the invoices *postdated* the date of the appellant’s application and indeed as Mr Walker pointed out the first invoice dated 27th February 2013 in fact postdates the deposit in the bank account. Indeed there were cash deposits which were unexplained in the bank statement.

22. At paragraph 14 the judge stated

“Also within the appellant’s bundle were a number of handwritten documents which appear to show the provision of cleaning services and the payment of the various sums of money. These documents are not proper invoices and they do not contain details of the EEA sponsor. Most of them postdate the date of the appellant’s application. In my view they are not supportive of the claim that the EEA sponsor is indeed engaged in self-employment activities.”

23. As the judge pointed out there were no details save for a purported signature of the appellant’s sponsor on the invoices and the difficulty with the schedule which was produced before me at the Upper Tribunal is that this schedule was drawn up after the First-tier Tribunal determination. The judge pointed out the invoices were not produced until 2014 and there is no reliable method of connecting the invoices with the cash deposits prior to the refusal of the appellant’s application. As the judge clearly noted the invoices postdated the appellant’s application. Bearing in mind the paucity of the evidence, which the judge took into account overall and on a reading of the determination as a whole I am persuaded that the judge gave adequate reasons for refusing this appeal and I find that there is no error of law and that the determination should stand. The production of further evidence in the bundle before me, I consider, acknowledges that the evidence before the First Tier Tribunal was indeed deficient.

24. I find no error of law in the determination of Judge Handley and the determination shall stand.

Signed

Date 4th August 2014

Deputy Upper Tribunal Judge Rimington