



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49164/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13th August 2014

Determination Promulgated
On 1st September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

OLEXIY YAROVENKO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Jones of Counsel instructed by Cavendish Legal Group
For the Respondent: Mr A Kandola, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 10th June 2014 Upper Tribunal Judge Goldstein gave permission to the appellant to appeal against the determination of Judge of the First-tier Tribunal Paul in which he dismissed the appeal under the Immigration Rules and on human rights grounds against the decision of the respondent to refuse a residence card as the family

member of a qualified person in accordance with the provisions of paragraph 17 of the Immigration (European Economic Area) Regulations 2006.

Error on a Point of Law

2. Judge Goldstein granted permission on the basis that it was arguable that Judge Paul had failed to take account of material evidence before him with the consequence that he made mistakes of fact leading to unfairness.
3. The grounds of application argue that the judge: failed to take into consideration the contract of employment for the sponsor; took issue with matters not raised at the hearing and thus deprived the appellant of the opportunity to address them; wrongly took into account evidence relating to the appellant's employment when considering that of the sponsor; and made unfounded allegations of dishonesty against the appellant's representatives. It is also submitted that the judge failed to follow the guidance set out in *Tanveer Ahmed* [2002] UKIAT 00439 when considering statements of account from Barclays Bank.
4. I heard submissions from both representatives in relation to the error issue.
5. Mr Jones argued that the judge had committed errors of fact. It was wrong for him to give no weight to the sponsor's contract of employment which clearly showed that she was working and that money had been paid into her bank account. There was also no basis upon which the judge could have concluded that the Barclays bank statements could not be relied upon. The respondent had not proved that the documents were fraudulent. The judge's conclusions in paragraph 13 of the determination were wrong as the transfer credit advice gave the identity of the bank and its location.
6. As to the allegations against solicitors, Mr Jones argued that the judge was wrong to infer any irregularity into the fact that the appellant was employed by a company which had its registered office at the same address as representatives without giving the parties the opportunity to respond. The same could be said for the judge's questioning of payments from an account with a bank in Latvia when the company was trading from Scotland. If the judge had concerns about these matters then an adjournment might have been appropriate to enable the appellant to respond.
7. Whilst Mr Jones conceded that the appellant had not put bank statements before the judge even though these had been given to representatives, the judge did have the credit slips showing payments.
8. Mr Kandola confirmed that the respondent relied upon the terms of the response which argued that, apart from the contract of employment, there was no other documentary evidence to show that the appellant was working as claimed and the judge was not in error in concluding that the appellant had not discharged the burden of proof. He further contended that insufficient financial information had been provided to show that the appellant was in receipt of pay. He also argued that the judge's comments about the coincidence in addresses (paragraph 16) was not critical as it related to the employment of the appellant rather than the sponsor. Further, the judge had found documents to be unreliable (paragraph 17) rather than to be false.

9. In conclusion Mr Jones argued that any allegation of impropriety against representatives, as suggested by paragraph 16 of the determination, had to be raised with Counsel at the hearing.

Conclusions

10. At the end of the hearing I announced that I was satisfied that the determination showed errors on points of law in relation to the judge's credibility findings such that the appeal should be heard afresh by the First-tier Tribunal following the provisions of paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chamber of the Senior President of Tribunals dated 25th September 2012. My reasons for those conclusions follow.
11. At paragraph 12 of the determination the judge describes the circumstances surrounding the sponsor's employment as "very curious". That appears to be because the company for which she worked as a self-employed person had its offices in Scotland but made payments from a bank account in Riga in Latvia, the sponsor's home country. The determination does not show that the judge raised the issue with representatives in order to give the appellant and sponsor the opportunity to respond. Certainly the payment of funds from a foreign account does not, of itself, mean that the appellant's evidence about her employment should not be believed. Although, in paragraph 12, the judge also found the sponsor's evidence about the provenance of invoices to be less than satisfactory, no specific reason is given for that conclusion save that when giving evidence the sponsor appeared to be "a little uncertain to begin with" (paragraph 7). The judge's conclusions about all of these matters are inadequately reasoned.
12. As to the conclusions of the judge in relation to the transfer credit advice, he describes this also as "curious" because it does not identify the precise bank and its location. But the document itself gives the full postcode of the Leicester branch of the bank where it was issued. This was a mistake of fact.
13. The judge also reached his credibility findings on the basis that the contract of employment produced by the appellant for Easy Street Commodities Ltd had a registered address which was that of the representatives. The judge does not explain why this causes him to disbelieve the appellant save to say that the matter is again "curious". The judge's conclusions are no more than speculation and are inadequately reasoned in circumstances when a contract of employment could be considered as good evidence of such employment.
14. The judge's failure to give adequate reasons for findings on material matters and to give the appellant the opportunity to respond to issues which were not raised at the hearing and the mistake of fact amount to errors on points of law.
15. As the errors mean that fresh findings of fact must be made in this appeal a fresh hearing in the First-tier Tribunal is appropriate following paragraph 7(2) of the Senior President's Practice Directions of 25 September 2012.

DIRECTIONS

1. This appeal is to be heard afresh by the First-tier Tribunal at Taylor House on 11th February 2015.
2. The hearing should not be before Judge of the First-tier Tribunal Paul.
3. A Latvian and a Russian interpreter will be required for the hearing which is estimated to last two hours.

Signed

Date

Deputy Upper Tribunal Judge Garratt