



IAC-PE-AW-V1

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

Appeal Number: IA/25833/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 28<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MR NOMAN ASLAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Banavero – Counsel

For the Respondent: Mr C Avery – Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. This is an appeal by Noman Aslam a citizen of Pakistan born 4<sup>th</sup> October 1992.
2. He appeals against the determination of First-tier Tribunal Judge Hussain issued on 23<sup>rd</sup> February 2015 dismissing his application for an EEA residence card. The Secretary of State refused the application because he was not satisfied that the Appellant's EEA family member was exercising Treaty Rights in the UK and thus a

family member as described in Regulation 6 of the Immigration (EEA) Regulations 2006.

3. The Appellant applied to the First-tier Tribunal for permission to appeal against the decision of the Respondent and on 24<sup>th</sup> June 2015 First-tier Tribunal Judge Lever refused permission. He noted that the grounds assert that the Judge had considered matters not raised by the Respondent and that the Respondent should have been flexible in requesting further information but found that since the Appellant had requested that the appeal be dealt with on the papers the Judge was entitled to deal with the matter on the documents before him. He found that the Judge had given clear reasons at paragraphs 2 to 3 and 7 to 14 for not finding the Appellant to have established that his wife was exercising Treaty Rights in the UK. He found that there was no arguable error of law. Permission was then sought from the Upper Tribunal and was granted by Upper Tribunal Judge Wikeley.
4. It is submitted in the grounds that the only finding of fact made to support any refusal is that the Appellant has not provided any evidence to rebut the discrepancy in the phone number and address of the Sponsor's employer. It is submitted that there was a plethora of evidence, none of which had been scrutinised by the Judge. There is no reference to the employer's letter dated 9<sup>th</sup> June 2014 which confirms the authenticity of the business telephone number and its correct registered address nor to the fact that the payslips which were issued East London Traders Ltd, a company which is registered with Companies House. It is submitted that there was only a "bland" reference to a letter from the director of the company confirming that he had made a statutory declaration that he had typed the incorrect phone number and the incorrect address on the headed notepaper used for the letter confirming the employment. It is also submitted that there is merit in the Article 8 grounds in this case and these were not dealt with.
5. Judge Wikeley said:
  - "2. In the letter dated 9<sup>th</sup> June 2014 the Respondent gave a single reason for not accepting that the employment could be verified, relating to the unsuccessful attempt to make contact with the employer on the stated telephone number as given in the letter of 24<sup>th</sup> April 2014. The Appellant provided a statutory declaration from the employer purporting to explain the reason why the wrong number appeared on that letter. The Judge noted this evidence at paragraph 9 but it is unclear what weight was attached to that evidence and the explanation it contained.
  3. The Tribunal's reasons for declining to accept that the Appellant's wife was employed and exercising Treaty Rights are set out at paragraphs 11 to 14. It is arguable that these may disclose an error of law in part for the reasons given in the Grounds of Appeal. I make the following further observations.
  4. First, the Tribunal's primary reason was the Appellant's failure to account for the discrepancy on the wording of an employer's stamp that appeared on the papers at paragraphs 11 and 12. This raises two issues. First, there is an issue of fairness, as this was not the reason relied on by the Respondent and had not apparently been put to the Appellant to provide an explanation. A FTT is

entitled to proceed on the papers but only if due process is observed. Second, the Judge's transcription of the stamp at paragraph 11 is incorrect as it inserts 'Luton' where that place does not appear in the original. This error may have affected the significance attached to this evidence.

5. Second, the Tribunal was plainly exercised by the fact that there was no evidence that a business traded from No. 73 Credon Road (see paragraphs 13 to 14); rather, any official paperwork (e.g. from HMRC or Companies House) was addressed to No. 77 Credon Road. However the main plank of the Appellant's argument against the case as put by the Respondent was that No. 73 was a misprint and that No. 77 was the correct address all along. In this context, the failure to make a clear finding about the statutory declaration is problematic.
6. That is not to say that the Appellant's case was in any way watertight – e.g. the alleged contract of employment referred to the place of employment as being No. 73 and not No. 77. However there is sufficient here to justify giving permission to appeal.”
6. The position of Mr Avery at the hearing before me was that the Judge was entitled to make a decision based on the documents produced. He relied on the documents produced and he reached findings which were open to him on the evidence before him. He said there are clearly issues with the evidence.
7. Mr Banavero submitted that the Judge should not have looked at things that were not raised by the Secretary of State because it was obvious that he could not get any answers from the Appellant about these matters. The Secretary of State had said that the phone number was the only issue. Mr Banavero said that new issues were raised. The Judge ignored the PAYE information and the payslips. The company is not a dormant one.

### **Findings on error of law**

8. The Appellant requested that the appeal be heard on the papers. A case dealt with in this way attracts a fee of £80 compared to one of £140 for an oral hearing. Apparently the Appellant said he could not afford experienced Counsel to represent him at the hearing. He had said on the Notice of Appeal that he wanted to have an oral hearing but wrote to the Tribunal on 19<sup>th</sup> January 2014 asking that it be done on the papers. It would have been open to the Judge to order an oral hearing if he thought one was necessary with no additional fee being charged in those circumstances.
9. The Appellant had come to the UK originally as a Tier 4 Student Migrant and was granted leave to remain until 3<sup>rd</sup> May 2014. It is the case that the sole reason given in the refusal letter is that when a representative of the Home Office telephoned East London Traders Ltd on the number shown on the letter from them dated 24<sup>th</sup> April 2014 that the Appellant had provided with the application to evidence his wife's employment, the person answering the call said that the number did not relate to East London Traders Ltd and when a request was made to speak to the person who had written the letter that name was not recognised.

10. The issue before the Judge was whether the Appellant's wife was exercising Treaty Rights in the United Kingdom.
11. In the Grounds of Appeal the Appellant said that his wife's employer did not have a printed letterhead at the time the letter dated 24<sup>th</sup> April 2014 was written and the letterhead was made up and the telephone number mistyped. The Appellant had confirmed this in a Statutory Declaration.
12. The point made in the grounds about the Judge putting the word "Luton" into his explanation of what was on the stamp is justified because the word Luton does not appear on the stamp but the whole point is that the address given on the stamp is 7E Credun Road, Lunoon. The postcode is the same as that given by the Appellant as the employer's address on the same page of the application form but the address is different. Companies House have the address as 77 Credon Road. This is the address given by Mohammad Touhivul Islam in his Statutory Declaration dated 13<sup>th</sup> June 2014. He says that the telephone number provided on the letter dated 24<sup>th</sup> April 2013 was incorrect because he had to compose a letterhead and typed the wrong phone number on it. The letter dated 24<sup>th</sup> April 2014 has the address of 73 Credon Road and the telephone number bears no relation, apart from the prefix of 0208, to the telephone number on the letter of 24<sup>th</sup> April. Mr Islam also spells Credon with an "o" rather than a "u" as shown on the stamp, and I have to say that the signature on the Statutory Declaration is completely different to that on the letter.
13. Judge Hussain did rely on the discrepancy in the stamp. He said the Appellant had not accounted for this. He noted that whilst documents from Companies House state that the company East London Traders Ltd is an "active" company, the last accounts were filed on 31<sup>st</sup> January 2013 and there is a comment under "Recent filing history" - "Accounts of dormant company made up to 31/1/13". The registered address is given as 77 Credon Road but the letterhead says 73 Credon Road. There was no document addressed to the director at 73 Credon Road. There was no evidence that the business was trading either in May 2014 when the Appellant's application was made or subsequently.
14. Basically the submission of Mr Banavero was that since the Judge was raising points that had not been made by the Secretary of State he should have arranged for an oral hearing to take place so that the Appellant could be asked about these things. The fact is however that there were several discrepancies that were obvious to anyone looking at the evidence. They would have been obvious to the Appellant and his wife had they checked the evidence before submitting it to the Respondent. Even leaving aside the issue of the stamp, one has to ask how the Director of a business would put down the wrong telephone number and that so many variations of the address were given. The records of Companies House indicated that the business was dormant. The Appellant chose not to have an oral hearing presumably in the belief that the Statutory Declaration was all that was required to rebut the reason for refusal. It was the Sponsor's job that was in issue and evidence from her could perhaps have resolved the doubts. The Appellant must have known that but chose not to offer oral evidence. I do not think there was any obligation on the Judge, given the blatant

discrepancies in the evidence before him to adjourn in the hope that further evidence would be forthcoming. The burden was on the Appellant to establish that on the balance of probabilities his wife was working. The fact is that even leaving aside the issue of the stamp the evidence that was produced to the Secretary of State raised serious concerns both about the viability of the business at the time of the application and decision and of the address and telephone number which the Judge found not to be explained by the Statutory Declaration.

**Notice of Decision**

The decision of the First-tier Tribunal does not contain a material error of law and shall stand.

No anonymity direction is made.

Signed

Date: 26<sup>th</sup> October 2015

N A Baird  
Deputy Judge of the Upper Tribunal