



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26222/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 18th March 2015

Decision & Reasons Promulgated
On 26th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MUHAMMAD ALI BUTT
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik of Counsel instructed by Maalik & Co Solicitors
For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Caswell promulgated on 10th November 2014.
2. The Appellant is a male Pakistani citizen born 1st February 1990 who on 18th November 2013 applied for a residence card on the basis that he is the spouse of an EEA national exercising treaty rights in the United Kingdom. The application was made because the Appellant had married a Czech national, Lucie Kratka (the Sponsor) on 17th October 2013. The Sponsor is exercising treaty rights as a self-employed cleaner.

3. The application was refused on 2nd June 2014. In giving reasons for refusal the Respondent contended that insufficient evidence had been provided to prove that the Sponsor was economically active in the United Kingdom as a self-employed person, and it was contended that the Appellant and Sponsor had entered into a marriage of convenience, so that the Appellant could obtain leave to remain in the United Kingdom. The application was therefore refused with reference to regulations 2 and 6 of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).
4. The Appellant appealed, and her appeal was heard by Judge Caswell (the judge) on 4th November 2014. After hearing evidence from the Appellant and Sponsor, the judge concluded that the marriage was not one of convenience and therefore the appeal succeeded on that ground. However the judge found that insufficient evidence had been submitted to prove that the Sponsor was exercising treaty rights as a self-employed person, and for that reason the appeal was dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the Sponsor had submitted evidence to show that she was exercising treaty rights in the United Kingdom. She had provided with the application an advertisement for her business, together with a letter from Proacc Associates dated 6th November 2013 confirming that she had been self-employed since 13th June 2013 with a weekly income of approximately £210. The Sponsor had also submitted confirmation from HM Revenue & Customs (HMRC) dated 5th October 2013 confirming that the Sponsor needed to pay national insurance contributions of £45.90 before 31st January 2014.
6. It was submitted that at the hearing, new documentary evidence had been produced, and the judge had erred by not taking the evidence into account. This new evidence amounted to bank statements, and a letter from HMRC dated 4th October 2014 confirming the national insurance contributions which the Sponsor had to pay before 31st January 2015, a sum of £74.25.
7. Permission to appeal was granted by Judge of the First-tier Tribunal White who found that it was arguable that the judge had failed to take into account the evidence of economic activity referred to in the grounds seeking permission.
8. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the judge had directed herself appropriately in considering the treaty rights issue, and the grounds disclosed a disagreement with the findings made, but did not disclose an error of law.
9. The Respondent referred to rule 24(3)(e) of the 2008 Procedure Rules, and contended that the judge had failed to give adequate reasons for finding the Appellant and Sponsor to be in a genuine relationship. It was pointed out that there were no witnesses to the genuineness of the relationship at the hearing. It was also contended that the judge had failed to deal adequately with the Respondent's concerns in

relation to credibility, taking into account the Appellant's adverse immigration history.

10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision should be set aside.

The Appellant's Submissions

11. Mr Karnik relied upon Begum Pakistan [2011] UKUT 00275 (IAC) and submitted that the Sponsor had provided evidence of self-employment which proved that she was sufficiently economically active so as to be considered as exercising treaty rights. Mr Karnik submitted that Begum proved this was the appropriate test.
12. Reliance was placed by Mr Karnik upon the grounds contained within the application for permission to appeal and I was asked to find that the judge had erred by failing to have regard to material matters or evidence. When I asked for clarification as to what evidence it was contended the judge had not considered, Mr Karnik explained that he was in some difficulty as he had not appeared before the First-tier Tribunal. He could not categorically state what documents had been placed before the judge at the hearing, but contended that the judge had not taken into account the HMRC letter dated 4th October 2014 which stated that the Sponsor was due to pay national insurance contributions of £74.25 no later than 31st January 2015.
13. In relation to the rule 24 response Mr Karnik submitted that the judge had not erred in considering the marriage. The judge had heard evidence, and both the Appellant and Sponsor were cross-examined. The issue raised by the Respondent amounted to a disagreement and did not disclose an error of law.

The Respondent's Submissions

14. Miss Johnstone relied upon the rule 24 response which is dated 6th January 2015. I was asked to find that the judge had not erred in concluding that the Sponsor had not proved that she was exercising treaty rights. The mere fact that national insurance contributions are due does not without more mean that an individual is exercising treaty rights as a self-employed person.
15. In relation to the marriage, Miss Johnstone submitted that the judge had given inadequate reasons for finding that the couple had entered into a genuine and subsisting marriage.

The Appellant's Response

16. Mr Karnik disagreed that the judge had given inadequate reasons when finding that the marriage was genuine and subsisting and not one of convenience. In relation to self-employment I was asked to note that there were cash deposits into the Sponsor's bank account, which were commensurate with self-employed income.
17. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

18. I do not find that the judge erred in law, in concluding that the Sponsor had not proved that she was exercising treaty rights as a self-employed person.
19. It is contended that the judge did not take into account evidence that was submitted with the application, and further evidence submitted at the hearing. I do not accept this contention, and in my view the judge did take all of the evidence into account.
20. The judge set out the documents received from both parties in paragraphs 11 and 12 of the decision. Paragraph 11 sets out the documents contained within the Respondent's bundle, which includes the letter from Proacc Associates dated 6th November 2013 referred to in the grounds seeking permission to appeal, and also the HMRC letter dated 5th October 2013 referring to national insurance contributions that needed to be paid before 31st January 2014, which was also referred to in the grounds.
21. In paragraph 12 the judge specifically refers to the HMRC letter which is dated 4 October 2014, and which refers to national insurance contributions in the sum of £74.25 to be paid before 31st January 2015. The documents referred to in this paragraph also include the copy pamphlet advertising the Sponsor's business, again which was referred to in the grounds seeking permission.
22. The judge made findings on the issue of the Sponsor's treaty rights in paragraphs 29 to 31. I observe that there was no reference in the witness statements prepared by the Appellant and Sponsor to the issue of treaty rights, as those statements concentrated on their relationship.
23. I cannot ascertain what evidence the judge has failed to consider in relation to treaty rights. There is reference in the grounds to bank statements being submitted, and these are referred to in paragraph 12 of the decision, and considered in paragraph 29. The bank statements are issued by Barclays, in the name of the Sponsor, and consist of an annual summary for the period 19th September 2013 – 18th September 2014. All this shows is that the Sponsor had an average balance while in credit of £71.39 and an average balance while overdrawn of £9.78dr. She did not incur any fees or charges. In addition the Sponsor provided her bank statements covering a period between 17th May – 15th August 2014. The judge clearly considered these statements, noting that there were cash deposits and that there was only one entry which related to cleaning, on 21st July 2014 in the sum of £60.
24. In considering the evidence, the judge noted the absence of any accounts, any letters from clients, the absence of a tax return, and noted that the bank statements did not cover a particularly long period. The tax return could have been provided if it had been lodged with HMRC. I accept that in relation to the tax year ending in April 2014, the deadline for submitting a tax return does not expire until 31st January 2015, but the judge was entitled to take into account its absence, and the absence of any further letter from the Appellant's accountants, following the letter dated 6th November 2013, issued some twelve months previously.

25. The judge did not take into account any irrelevant considerations, nor did she omit to consider any relevant considerations or evidence. It is not suggested that her decision reaches the high threshold of perversity, and in my view the decision could not be regarded as perverse. The judge did not misdirect herself in law. She had to consider whether the Sponsor had submitted sufficient evidence to prove that she was exercising treaty rights as a self-employed person. The burden of proof was on the Appellant. The judge was entitled to conclude that insufficient evidence had been submitted, and I find the challenge made by the Appellant amounts to a disagreement with the findings made by the judge, but does not disclose an error of law.
26. In relation to the Respondent's submission that the judge erred in law in considering the relationship between the parties, I conclude that this submission is not made out.
27. The judge was aware of the concerns expressed by the Respondent in relation to the relationship, and was aware that the couple had married very shortly after meeting, and the judge was aware of the Appellant's immigration history which is set out in paragraphs 1 and 2 of the decision. The judge was also aware that when the couple first attempted to marry on 1st July 2013, the Appellant was apprehended by Immigration Officers and arrested as an overstayer.
28. The judge considered the relationship between the parties at paragraphs 14 - 28. The judge found that the concerns expressed by the Respondent broadly fell into four categories, and dealt with each of those four categories in her decision.
29. The decision demonstrates that the judge carefully considered all the relevant evidence, giving particular consideration to the record of interview, and the oral evidence given by the Appellant and Sponsor, both in-chief and in cross-examination.
30. While it may be said that some judges may have reached a different conclusion, that is not relevant, and not the issue that I have to decide. I conclude that the judge did give careful consideration to all the issues raised in relation to the relationship between the Appellant and Sponsor, and was entitled to conclude that the marriage was not one of convenience, and adequate and sustainable reasons were given for reaching this conclusion. The points made by the Respondent in the rule 24 response indicate a strong disagreement with the decision made by the judge, but do not disclose an error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision and the appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

20th March 2015

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

20th March 2015