



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/28060/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

On: 2nd June 2015

**Determination
Promulgated**

On: 5th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Mr Muhammad Umar
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Brown, Counsel instructed by Arshed & Co Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan date of birth 26th September 1987. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Graham) to dismiss his appeal against a refusal to issue him with a residence card confirming his right of residence as the spouse of an EEA national.

¹ Permission was granted by First-tier Tribunal Judge JM Holmes on the 30th January 2015

2. The only matter in issue before the Judge was whether the Appellant's wife, Slovak national Ms Zuzana Pulkova, was exercising treaty rights. It was the Appellant's case, at the date of application that she was working, in both a self-employed and employed capacity as a cleaner. The appeal was determined on the papers, and at that time the Appellant had, it is accepted, submitted a large bundle of documents in support of his appeal. On appeal he contended that his wife continued to work as a cleaner, but also that she was employed as a carer for Trafford Metropolitan Borough Council (MBC).
3. The appeal was listed on the 9th October 2014. At paragraph 10-12 of the determination the First-tier Tribunal considers the evidence of Ms Pulkova's employment with Trafford MBC. It is found that she had submitted a "solitary payslip" relating to September 2014 and in those circumstances had not shown that she continued to be employed by Trafford MBC. It was accepted that she had worked as a cleaner between September 2013 and April 2014 but since there was "no more recent evidence" of her economic activity after April 2014, it could not be demonstrated that she was exercising treaty rights at the date of the in-country appeal.
4. It is now contended by the Appellant, and accepted by the Respondent, that the bundle before the First-tier Tribunal did in fact contain evidence of economic activity that post-dated April 2014. There were a number of invoices for cleaning of the same type which had led the Tribunal to accept the self-employment prior to April 2014; there was a receipt for payment of Class 2 National Insurance Contributions dated 20th July 2014 and Barclays Bank statements showing regular cash deposits right up to September 2014, when the documents were lodged along with the grounds of appeal. It follows that the Tribunal did err in that it failed to have regard to material evidence and the decision must be set aside.
5. Before me the Appellant and Ms Pulkova attended, and produced a number of original documents showing that she was, and continues to be, employed by Trafford MBC as a carer. This evidence consisted of original payslips, her P60 for the year ending April 2015, and bank statements showing deposits corresponding to her payslips. She also produced her original invoice book showing the copy receipts for money received to date in her part-time self-employment as a cleaner. She further relied on original invoices, stamped as paid by the Post Office, for recent payments of national insurance contributions. Having regard to all of the evidence before me I am satisfied that Ms Pulkova is exercising treaty rights.

Decisions

6. The decision of the First-tier Tribunal contains an error of law and it is set aside.

7. I re-make the decision in the appeal by allowing it under the Immigration (European Economic Area) Regulations 2006.
8. I make no direction for anonymity because neither party has requested one and on the facts I do not consider such an order to be necessary.

Deputy Upper Tribunal Judge Bruce
3rd June 2015