



IAC-FH-NL-V1

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

Appeal Number: IA/34876/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 October 2015**

**Decision & Reasons Promulgated  
On 6 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MR TAHIR AMHED AZIZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K Manzur-e-Mawla instructed by Morgan Hall Solicitors  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. On 16 May 2014 the appellant who is a citizen of Pakistan and whose date of birth is 3 August 1987 made an application for a residence card pursuant to the 2006 EEA Regulations. This application was refused. The reasons for refusal were that the sponsor's work place as stated in the application form, namely Gourmet Restaurant and Takeaway Limited at 37 York Road, did not exist. According to the respondent there was a different business trading at that address and this was discovered after the respondent made telephone contact using the telephone number given by the sponsor and shown on the letter of employment that was submitted in

support of the application. In addition the respondent was not satisfied that the payslips submitted by the appellant indicated that the sponsor was paying the appropriate tax or national insurance contributions. It was noted that the EEA sponsor submitted a cheque in support of the application which was allegedly given to her by her employers. The cheque is dated 2 June 2004, the corresponding payslip submitted by the sponsor was dated 5 June 2014 and the sponsor's bank statement showed that the money was in fact paid into her account on 3 June 2015. It was not clear to the respondent why the sponsor was paid before the payslip was issued. In addition the money is entered as a credit and not a cheque on her bank statement and it is not shown on the bank statement that it was from her employer. The respondent concluded that there was no clear evidence that the business for whom the sponsor stated she was working was in fact trading.

2. The appellant appealed and his appeal was dismissed by Judge of the First-tier Tribunal McIntosh in a decision of 2 June 2015 following a hearing at Taylor House on 6 March 2015.
3. The judge heard evidence from the appellant and the sponsor. Their evidence was that the sponsor, Ms Bolz, was employed as indicated on the application form. The address that she gave on the application form and which is on the letter that was submitted with the application shows the registered address which is the address of the company's accountant whereas the business trades from another address, namely 717 to 719 High Road, which is the sponsor's place of work. The judge dismissed the appeal. He indicated that he had taken into account all the available evidence and the oral evidence that he heard.
4. The judge found that the contract of employment submitted by the appellant in support of the application differed in detail from the contract of employment which was in the appellant's bundle. The latter including details not included in the former including a statement that reads as follows:-

"The normal place of work will be at 717-719 High Road, 7 Kings-Ilford IG3 8RL".
5. The judge recorded that that address appeared on the flier for Gourmet Grills and the business which appears on the Google search printout submitted by the appellant. The judge went on to find that the business for which the sponsor claims to work, namely Gourmet Grill, is a different business from that which was stated in the application form namely Gourmet Restaurant and Takeaway Limited at 37 York Road. The judge found that there was no official document concerning the registration of the business which states that Gourmet Restaurant and Takeaway Limited is Gourmet Grills. He also noted that there was no official document which stated that 37 York Road is the accountant's office for Gourmet Restaurant and Takeaway Limited. The judge went on to find that "it highly regular that a contract of employment should state the name of the business and

provide an address at the head of the document which is not the place of work". The judge also noted that this address, namely 37 York Road also featured at the head of the letter from the employers which was submitted with the application dated 14 May 2013.

6. The appellant submitted a second letter from the employer which is in the appellant's bundle and dated 3 February 2015, but the letterhead shows the address of Gourmet Restaurant and Takeaway Limited at 717-719 High Road. The judge went on to conclude that there were no details as to when the company changed its address from one location to another and without a credible explanation for the change of address on the headed notepaper he gave no evidential weight to the document.
7. The judge went on to conclude that it is reasonable to expect the sponsor as a sales assistant to know the address and telephone number of the premises and that she could not recall the number of the business despite the fact that she had been employed since 3 May 2014. He went on to conclude that no reasonable explanation has been given explaining why the address of 717-719 is not on the letterhead confirming the sponsor's employment (first letter submitted with the application) and is not referred to at the outset in the terms of the contract which was submitted with the application.
8. The judge went on to consider what he perceived to be anomalies in relation to the cheque paid to Ms Bolz dated 2 June 2014 and indicated that this was still unexplained. He went on to find anomalies in what he referred to as the version of the contract of employment submitted by the appellant and concluded that the sponsor was not a genuine employee of Gourmet Restaurant and Takeaway Limited as claimed.
9. The appellant was granted permission to appeal by Judge of the First-tier Tribunal Judge A K Simpson on 1 September 2015.
10. I heard oral submissions from both parties. Mr Manzur-e-Mawla indicated at the start that the appellant was not relying on the ground of appeal relating to Article 8. He submitted that the judge did not have a complete copy of the contract which was submitted with the application because the copy in the respondent's bundle was incomplete. It was further submitted on behalf of the appellant that the judge had made erroneous calculations relating to the sponsor's pay. He had considered the sponsor's pay on the basis of four weeks as opposed to a calendar month. The judge did not take into account the evidence of payslips which were generally corroborated by the bank statements.
11. Mr Clarke indicated that even if this were the case that the contract in the respondent's bundle was incomplete, it would not be material in the light of the findings as a whole and he indicated that the judge was entitled to attach weight to the change in the evidence. It was Mr Clarke's view that the grounds amounted to a disagreement with the findings of the Tribunal and it was clear in his view that the judge took into account the evidence

before him and that he gave adequate reasons. There was no support for the assertion that the contract in the respondent's bundle was not that which was submitted by the appellant in support of the application. There were two separate companies listed at two separate addresses and the judge was entitled to conclude to make adverse conclusions against the appellant.

### **Error of Law**

12. In my view the judge materially erred. The forensic analysis that the judge conducted in relation to the sponsor's pay at paragraph 27 appears to have led him into error. He based the sponsor's income on a four week period as opposed to a calendar month and this led him to conclude that her monthly salary was not properly reflected in the payment that she received. It is not clear to me that it was a matter raised by the respondent at any time and it was not put to the appellant.
13. There was evidence in the appellant's bundle of bank statements showing credits specifically from Gourmet Restaurant which accorded with the payslips that were submitted. In my view the judge did not consider these. I can find no reference to them in the decision and it is evidence that potentially corroborates the appellant's case. There was a letter from the sponsor's employer of 3 February 2015 which seeks to deal with the issue raised in the Reasons for Refusal Letter relating to the anomaly between the cheque and the payslip. The judge did not attach weight to this letter because in his view there were no details as to when the company changed its address from one location to another and there was no explanation about the change of address on the headed notepaper. Whilst it is the case that there is no explanation from the employers explaining why the letter submitted with the application gave the address as that of the registered address and the later letter from them showed the trading address, the evidence was not that there was a change of address from one location to another. It was simply that the first letter indicated the address of the registered company whilst the second one the address from where the business traded. I endorse the comments of Judge Simpson who granted permission in relation to the issue of the different addresses.
14. The judge rightly concludes that there was no evidence from the accountants which would corroborate the appellant's evidence. However, there was a Google search which indicated that the address at 37 York Road was a firm of accountants which would again potentially corroborate the appellant's evidence and this does not appear to have been taken into account by the judge.
15. It is the appellant's case that the contract of employment which was submitted with the application is the same document as that in the appellant's bundle only that there are a number of pages missing from the document in the respondent's bundle. The missing pages are significant because the full contract indicates that the sponsor's normal place of work

is at 717-719 High Road which would indicate that there was evidence in existence at the date of the application which would support the appellant's case as it was before the First-tier Tribunal. It is clear that the issue of the missing pages was not raised before the judge and it should have been. The appellant was represented at the hearing. However, although the judge cannot be blamed failing to recognise this as the matter was not raised before him, it amounts to an arguable procedural irregularity leading to unfairness.

16. The judge made a number of findings against the sponsor and the appellant relating to the sponsor's employment which either are not challenged or the challenges amount to a disagreement with the findings. However, I cannot with any certainty conclude that the errors identified by the appellant are not material to the outcome and for this reason I set aside the decision of the judge to dismiss the appeal under the EEA Regulations and remit the matter to the First-tier Tribunal for a re-hearing.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside and the matter is remitted back to the First-tier Tribunal for a fresh hearing. There are no findings that are maintained. The First-tier Tribunal will make a finding concerning whether or not the contract in the respondent's bundle is an incomplete version of the contract in the appellant's bundle.

Signed Joanna McWilliam

Date 26 October 2015

Upper Tribunal Judge McWilliam