IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35861/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th March 2015	**On 18th March 2015**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMED AMINE OUHADDOU
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Secretary of State: Miss A Holmes, Senior Presenting Officer
For the Respondent: No appearance and no representation

DECISION AND REASONS

1. This is the Secretary of State's appeal against a decision of the First-tier Tribunal (Judge Clapham) who, in a determination promulgated on 3rd December 2014 allowed the appeal of the Respondent against the decision of the Secretary of State to refuse his application for a residence card as a confirmation of a right to reside in the United Kingdom. Whilst this is an appeal brought by the Secretary of State, I shall refer to the parties as they were before the First-tier Tribunal.

2. The Appellant is a national of Morocco born on 1st May 1987. He applied for a residence card on the basis that his spouse was exercising her treaty rights in the UK as defined under Regulation 6 of the Immigration (EEA) Regulations 2006. In the application he stated that his EEA family member was employed and had provided wage slips for 30th November 2013 to 28th February 2014 and a contract of employment dated 1st October 2013 from Marjan (UK) Ltd.

3. The application was refused in a decision made on 26th August 2014. The basis for that refusal was two fold; firstly that on 25th August 2014 a visit was undertaken by Immigration Officers to the Appellant's claimed address and during the visit a lady answered the door and advised officers that the Appellant did not live there and she did not know of the Appellant. It was further stated that there was no evidence that the Appellant or his EEA Sponsor resided at that address. The second issue related to the Appellant's wife and Sponsor and whether she was a worker exercising treaty rights. In this respect it was noted that the officials had made several telephone calls to the named employer but could not contact him and the company which the EA family member claimed to work for could not be located on the Companies House website. Thus the application was refused on two grounds.

4. The Appellant issued grounds of appeal and provided with it further documentation and evidence in relation to the visit that had taken place on 25th August 2014.

5. This was a case that was heard on the papers and therefore the judge was required to consider the evidence that was before her. The judge set out her findings at paragraphs 6 to 9 of the determination and for the reasons given, having considered the evidence, allowed the appeal.

6. The Secretary of State sought permission to appeal that decision and permission was granted on 20th January 2015.

7. Before the Upper Tribunal there was no appearance on behalf of the Appellant. The case file indicated that he had been served with the proceedings and the Home Office file contained the same address. In those circumstances, I resolved that the hearing should continue in his absence.

8. Miss Holmes on behalf of the Secretary of State did not seek to rely on paragraphs 1 and 7 of the Grounds in which it was said that the judge should have had regard to the decision in **Shen (paper appeals: proving dishonesty) [2014] UKUT 236**. She explained that the circumstances in **Shen** could not apply to the particular facts of this case**.** She submitted that in respect of Ground 2, the way in which the Ground was worded was unfortunate and was rather difficult to follow but that what it appeared to be saying was that the explanation given by the Appellant was speculative. As to Ground 3 it did not appear to take the position further as that Ground submitted that at the time of the visit they

were not told by that person she was the landlady and therefore there was no need to doubt what she had said or for the officials to carry out any further checks. With regards to Grounds 4 and 5 she did not consider that it could be said that the decision of the judge was perverse. Her submissions, in essence, were that the judge should have exercised more caution in the circumstances where there had been no appearance on behalf of the Appellant and it was a case heard on the papers. Given what was in the report of the visit of 24th August she should have been more cautious. In effect she relied upon the grant of permission at [3] where it was stated that it was arguable that a bare assertion had been accepted as fact and that this amounted to an arguable error of law.

9. I have considered the Grounds that are now relied upon rather than the way that they have been drafted in the written Grounds. I have considered those Grounds in the light of the determination of Judge Clapham. The reasons for refusing the application are set out in the letter of 26th August 2014. Firstly, as a result of the visit made on 25th August 2014 it was stated that there was no evidence that the Appellant or the EEA Sponsor resided at the property and secondly, that the Appellant had failed to provide sufficient evidence to demonstrate that the EEA family member was a qualified person as a worker. This was because telephone calls were made to the claimed employer but they could not be contacted and that the company that the Appellant's family member claimed to work at could not be located on the Companies House Register.

10. Thus the judge was duty bound to consider those two issues. It is plain from reading the determination that the judge properly reminded herself that this was a case heard on the papers but importantly at [6] it was for the Appellant to establish the case on the balance of probabilities or as the judge stated, "or else it fails".

11. In relation to the first issue, the judge considered the evidence before her. The Secretary of State had relied upon the visit made by an Immigration Official to the property at the Appellant's claimed address. The judge recorded the contents of the minutes at [3] as set out in the bundle at G. It reads as follows:-

> "Monday 25th August 2014 Central London. Conducted a pastoral visit to the address … 12.50 arrived at the address and a Lithuanian woman answered the door and said the subject does not live there and does not know of him. She stated that she had lived at this address for two years and has never heard of the subject. She also stated that she is married to a Moroccan called Nabil who was not present at the time. If you have any further questions please do not hesitate to contact me."

12. The judge considered the evidence in a reply from the Appellant who had stated that he and his wife had had an argument with the landlady and since they did not leave the accommodation on good terms, the landlady misled the officials (see paragraph 7 of the determination). Whilst the Grounds appear to state that this was a bare assertion and that the judge simply accepted this, that is not the position. The judge did not simply

accept that explanation but considered it in the light of the evidence that was before her. She considered the contents of the minute of the visit and concluded that "It does not look as if the officials carried out any checks on the landlady and the information given in the report is scant to say the least". That is an accurate analysis of that evidence; there was no information before the judge that the Immigration Officer either identified the person who had answered the door or asked any further questions or sought any further information. Nor was any follow up visit made after the information provided by the Appellant in the Grounds of Appeal. However it is plain from reading the determination that the judge did not simply decide the first issue in favour of the Appellant simply relying on what the Grounds describe as a "bare assertion" but considered the other documents that had been provided in the light of the Secretary of State's position within the refusal letter that in addition to the visit made, there was no evidence that the Appellant or his EEA Sponsor had ever resided at the address. The judge considered the evidence that had been provided in the form of copy bank statements and copy utility bills (see [7]). Those documents showed a joint Barclays Bank account in their joint names with the address as relied upon, such statements from December 2013 to January 2014. They were bank statements in the Appellant's sole name at the same address, mobile phone bills for the EEA national member at that address plus a contract of employment and payslips all giving the same address. There was a further bank statement from 10th June to 9th July 2014 showing the relevant address and showing residence shortly before the visit was made. In those circumstances it was open to the judge on that evidence to reach the conclusion that contrary to the refusal letter, he had provided evidence that established that both he and the EEA national Sponsor had been residing at that address and therefore considered the circumstances of the visit in the light of that evidence and the explanation provided. That was a course entirely open to the judge to adopt.

13. At paragraph 8 of the determination, the judge went on to consider the second issue. Whilst the officials doubted that the EEA national was employed as claimed on the basis that the business was not registered at Companies House, she considered the evidence of the printout for Companies House with the copy letter from the company dated 10th September 2014. She concluded that the printout and the letter both contained the same company registration number and the company appeared live. Thus contrary to the grounds, the judge approached the appeal properly by giving anxious scrutiny to the documents. This was a case heard on the papers and she was required to consider the documents that were before her in the light of the reasons given for refusing the application. Whilst the Grounds at paragraph 6 submit that the doubts having been raised that should have been considered and that the Appellant had produced further evidence which the Respondent was not aware of, that is not the position. The Secretary of State had been served with the grounds of appeal and therefore that explanation was not new evidence and there had been no further follow up visit or further check made. Therefore on the evidence before the judge she was entitled to

consider the issue on the basis of that evidence which is what she did. It is difficult to see what else she should have done. Miss Holmes in her submissions did not seek to rely on the Grounds at 1 or 7 that the decision of **Shen** applied and that she should have ordered an oral hearing. Furthermore, she did not seek to rely on the Grounds where it was stated the decision of the judge was perverse. She was right to do so, perversity is a high hurdle and in the light of the evidence before the judge and her assessment, it could not properly be said that the decision was a perverse one but one that was open to her. The Grounds therefore are not made out and any disagreement with the findings made of the judge based on the evidence that was before her. The Grounds do not demonstrate any arguable error of law and the decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not involve the making of an error on a point of law; the decision shall stand.

No anonymity direction is made.

Signed Date 18/3/2015

Upper Tribunal Judge Reeds