



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

Appeal Numbers: IA/47832/2013
IA/47833/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th May 2015**

**Decision & Reasons Promulgated
On 28th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MUDDY ABDI SIBOMANA (A MINOR)
ANNUARY NGEGE KASSANDA (A MINOR)
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Pierre Sibomana, Sponsor

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Tanzania born respectively on 25th April 2004 and 1st May 2006. On 25th May 2013 they applied for residence cards as a confirmation of a right to reside in the United Kingdom. Their applications were refused by the Secretary of State on 20th October 2013. The basis of their applications were that in order to qualify for residence it was necessary for them to provide sufficient evidence

to demonstrate that their EEA family member was exercising free movement rights in the United Kingdom as defined under Regulation 6 of the Immigration (EEA) Regulations 2006 and that Regulation 6(2)(b) stipulated that a person who claimed to be a qualified person in the United Kingdom as a jobseeker must:

- (i) have registered as a jobseeker and was employed for at least a year before becoming unemployed;
 - (ii) had been unemployed for no more than six months, or
 - (iii) can provide evidence that they are seeking employment in the UK and have a genuine chance of being engaged.
2. The refusal referred to the employment of their father, Mr Pierre Kassanda. The Appellants appealed against the decision and the appeal was heard by First-tier Tribunal Judge Mailer sitting at Richmond on 29th September 2014. In a determination promulgated on 14th October 2014 the Appellants' appeal was allowed.
 3. On 17th October 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The Grounds of Appeal stipulated that the First-tier Tribunal had materially erred in law in that in applying Regulation 6 of the Immigration (EEA) Regulations 2006 the judge had failed to apply the Immigration (EEA) (Amendment) (No. 2) Regulations 2013 which came into effect on 1st January 2014 and 7th April 2014. Applying Regulation 6(2) it was submitted that under the new Regulations a Sponsor had to show that he could provide evidence that he was seeking employment and had a genuine chance of being engaged other than satisfying one or other of those conditions in the alternative as was set out in the original Regulation 6.
 4. On 26th February 2015 First-tier Tribunal Judge Saffer granted permission to appeal. In granting permission the judge acknowledged that the wrong Regulation may well have been applied as the test by the First-tier Tribunal but also that the Secretary of State had erred in conceding that the Regulation was met and that a Tribunal had wide discretion to permit a concession made to be withdrawn if there was good reason in all the circumstances to do so.
 5. It was on that basis the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal on 10th April 2015. The Appellants were not represented appearing by their Sponsor and father Mr Sibomana. The Secretary of State appeared at that hearing by her Home Office Presenting Officer Mr Wilding.
 6. I made findings and gave directions at that initial hearing to the effect that the First-tier Tribunal Judge (albeit I am sure inadvertently) had failed to apply the amendments to the EEA Regulations and that the judge was undoubtedly influenced in this by the concession made by the Secretary of State who clearly at that time also failed to acknowledge that the new Regulations were in place. There was however a completely different criteria that is applied when by substituting the word "or" with

the word “and” in that both limbs of Regulation 6(2) were now required to be met. In such circumstances considering the discretion available to the Tribunal I found there was a material error of law and set aside the decision of the First-tier Tribunal Judge.

7. At that hearing I intimated this to Mr Sibomana and indicated that it would be necessary for him to show that he was actively engaged in employment. His current work as a cleaner would satisfy that requirement but as he had only recently obtained employment he had no documentation in order to support his claim. In such circumstances rather than remaking the decision one way or the other I adjourned the matter and set out directions. It was agreed that within those directions I would evidence documentation which the Sponsor should consider producing to the court in support of his contention that he now met the Regulations.
8. The Sponsor has filed a small additional bundle of documents consisting of wage slips dated 31st March 2015 and 30th April 2015 both of which show that he is in employment with J & K Kleen Limited and that he has a monthly earnings of £514.50 and £494.00 for each respective recited month. In addition he has produced a letter from his employers dated 1st May 2015 confirming he has been in their employ as a cleaner since 1st March 2015 working sixteen hours per week.
9. Mr Jarvis intimates that whilst that evidence is quite satisfactory the Secretary of State does need to be satisfied that that employment is continuing. The Sponsor gave verbal evidence to the effect that his employment had commenced on 1st March 2015, that he worked sixteen hours per week earning £7 per hour and that he was still in employment. He confirmed that his income is paid by his employers into his bank account and he produced documentary evidence confirming that this had taken place.
10. In such circumstances Mr Jarvis conceded that there was no evidence before the Tribunal to dispute the suggestion that the Sponsor was currently working and that the Secretary of State would in such circumstances not contest the matter further.

Findings

11. This matter was adjourned because the Sponsor (and father) only needed to show that he was working and in continuing employment in order to demonstrate that he was exercising free movement rights in the United Kingdom as defined under Regulation 6 of the Immigration (EEA) Regulations 2006. It was not necessary for him to show that he was a jobseeker if he was actually in employment. The fact that he was no longer a jobseeker was not a matter to which the Secretary of State had previously been aware prior to the hearing to determine whether there was a material error of law. However on the evidence being produced by the Sponsor Mr Jarvis on behalf of the Secretary of State confirms that he is satisfied that the Sponsor is in employment and on such basis meets the Regulations. I agree with that analysis.

Notice of Decision

With it being shown that the Sponsor meets the requirements of the Immigration (EEA) Regulations 2006 the Appellants' applications for residence cards as confirmation of a right of residence as the family members of an EEA national are allowed.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris