



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
IA227232015

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House  
On 29 February 2016

Decision and Reasons Promulgated  
On 9 June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR OSAZEE OWEGIE  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Durojaiye, Solicitor, Moorhouse Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria, born on 28 September 1977. He appeals with permission against the decision of First-tier Tribunal Judge J S Pacey who dismissed his appeal against the decision of the respondent dated 16 June 2015, who refused his application for a residence card under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). His appeal was decided on the papers.
2. The appellant applied for a residence card as the husband of his sponsor, a national of France. She had worked for Spark Legend (UK) Ltd in permanent employment.

The respondent however noted that the company had been dissolved on 17 March 2015 and the appellant had failed to provide evidence that his sponsor was working.

3. In his skeleton argument before the First-tier Tribunal it was asserted that the sponsor had been employed by Spark Legend but was now employed by Apex Recruiting Agency, a sister company. Evidence had been supplied to this effect [6]. The appellant also stated in his witness statement that his sponsor is now employed by Apex Recruitment Agency.
4. In paragraph 4 of her witness statement, the appellant's sponsor stated that both Spark Legend and Apex Recruiting Agency were owned by the same organisation and when Spark Legend was dissolved, those who had been working with Spark Legend were absorbed into Apex Recruitment [9].
5. The Judge had regard to a letter from Spark Legend dated 22 November 2013, confirming the sponsor's employment. There was a payslip dated 6 December 2013 and a letter from Apex Recruitment Agency Ltd dated 24 August 2015 in which it was stated that the sponsor had been employed by them since 1 August 2015.
6. At [12] the Judge noted that Spark Legend had been dissolved on 17 March 2015 and that the sponsor began working for Apex Recruitment Agency on 1 August 2015. There was thus a gap of four and a half months when she was not employed. There was no evidence of any other employment during that period or that she engaged in job seeking activities. At the date of decision therefore, she had not provided satisfactory evidence that the sponsor was at that time exercising Treaty rights [12]. The appeal was accordingly dismissed under the 2006 Regulations.
7. On 7 January 2016, First-tier Tribunal Judge White granted the appellant permission to appeal. He noted that the Judge dismissed the appeal on the basis that the sponsor was not working at the date of the respondent's decision. That is an approach that is arguably inconsistent with the authority of Boodhoo (EEA Regs: relevant evidence) Mauritius [2013] UKUT 346 (IAC).
8. Mr Durojaiye submitted that the case “was on all fours” with Boodhoo.
9. On behalf of the respondent, Ms Isherwood submitted that two wage slips from Apex did not reveal that she was working. The Judge's findings were in accordance with the evidence.

### Assessment

10. In Boodhoo, supra, the Upper Tribunal – Mr Justice Blake - held that in an appeal under the 2006 Regulations, a Tribunal has power to consider any evidence which it

thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision. In that case, evidence of comprehensive sickness cover, which began after the date of decision appealed, fell to be considered by the First-tier Tribunal Judge, as it was plainly relevant to the substance of the decision, albeit that it arose after the date of decision.

11. The evidence before Judge Pacey included a letter from Spark Legend which confirmed the sponsor's employment. There was, in addition, a letter from Apex Recruitment Agency dated 24 August 2015 confirming that the appellant's sponsor has been employed as a cleaner in their organisation since 1 August 2015. It is also confirmed that her contract of employment is permanent.
12. The appellant also produced two payslips from Apex Recruitment Agency as well as her bank statement confirming payments in on 21 August and 28 August 2015, consistent with these payslips.
13. Judge Pacey stated that she took account of all the evidence [10]. That included the letter of employment and the payslips. She accepted the letter from Apex Recruitment Agency and the payslips produced.
14. The evidence of the sponsor's employment which began after the date of the respondent's refusal in June 2015 was relevant to the substance of the Tribunal's decision. The reference by the Judge to the dissolution of Spark Legend in March 2015 and her re-employment by Apex Recruitment Agency in August 2015, resulting in a gap of about four and a half months when she was not employed, failed to take into account that as at the date of decision, the appellant had subsequently become re-employed, and had produced evidence in confirmation.
15. The decision of the First-tier Tribunal thus involved the making of an error on a point of law. I accordingly set it aside and re-make it. From the foregoing, I find that there has been satisfactory evidence adduced confirming that the sponsor was exercising Treaty rights as at the date of the First-tier Tribunal's decision.

### **Notice of Decision**

The appeal is allowed under the Immigration (EEA) Regulations 2006.

No anonymity direction is made.

Signed

Date 31 March 2016

Deputy Upper Tribunal Judge Mailer