



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

Appeal Number: IA/37411/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 2 February 2016**

**Sent to parties on:
On 12 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAIBUDEEN BIN MOHAMMED SALIH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Wild, Senior Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. The Respondent in this appeal was the Appellant before the First-tier Tribunal and the Appellant was the Respondent. For ease of reference in this decision I refer to the Respondent as the Claimant and the Appellant as the Secretary of State. The Claimant is a national of Malaysia. On 23 June 2014 he applied for a residence card as confirmation of a right to reside in the UK under the European Economic Area Regulations 2006 (as amended) ("the EEA Regulations"). His application was refused as the Secretary of State concluded that he had provided insufficient evidence to demonstrate that his EEA family member was a qualified person for the purposes of the EEA Regulations.

2. The Claimant appealed against that decision and his appeal was allowed by First-tier Tribunal Judge Lagunju in a decision promulgated on 15 April 2015. The Secretary of State sought permission to appeal that decision and permission was granted by First-tier Tribunal Judge Heynes on the ground that it was arguable that the First-tier Tribunal failed to give adequate reasons that the sponsor had given a credible account of her employment in the light of unclear and contradictory evidence.
3. The grounds for permission to appeal assert that First-tier Tribunal had recorded that the sponsor's evidence regarding her upcoming job was unclear, that there were discrepancies and that the sponsor changed her evidence and divulged that her job offer was from her own brother only under cross-examination. Although the First-tier Tribunal had recorded that the details of the job offer were unclear and at times inconsistent and that the details of her knowledge of the job were left to her husband, the First-tier Tribunal found the job offer credible. It is argued that in the light of these adverse findings the sponsor's account of the job offer was not credible, not a conclusion which the First-tier Tribunal could reasonably have come to and was inadequately reasoned.

The Hearing

4. Mr Mills said it was a fairly straight forward challenge. The Claimant had limited documentary evidence of employment. The Respondent had attempted to make phone calls to the employer as documented in the Reasons for Refusal Letter ("RFRL") but these were fruitless. The sponsor was no longer employed but had a new job starting in another month or so. The evidence regarding that job was unclear and inconsistent. The employment was provided by sponsor's brother. The Presenting Officer made the point that this brought into question whether it was a genuine offer. The Judge accepted that the evidence was inconsistent. She did not give adequate reasons for the conclusion that the employment was genuine. At the time of hearing the sponsor was not working and the argument was made by the Respondent that there was no evidence that the sponsor had registered as unemployed. To retain her status she had to register as a jobseeker. That was overlooked. It was an obvious point.
5. The Claimant said that the sponsor had never registered as a job seeker. The sponsor was about to start to her job on 2 February 2015 so she did not have payslips. That was why she did not have more details of that job and that it was about to start. He only gave her the letter on the day she was attending the tribunal. The offer was genuine. She was genuinely working now and did what she said at court. They did not lie and she was working now at the same employer.

Error of Law

6. I concluded that there was a material error of law in the decision of the First-tier Tribunal for the following reasons. The Claimant was required to demonstrate that his EEA sponsor was a qualified person for the

purposes of the EEA Regulations. The material question turned on whether a job offer was genuine. The First-tier Tribunal noted at paragraph 13 of the decision that the sponsor's evidence regarding her upcoming job was unclear. The Judge records that the sponsor claimed that she only became aware of the job offer on the day of the hearing and later changed her evidence and claimed she received the letter and discovered the job two days before the hearing. The Judge further records at paragraph 13 that only when probed did she accept that the job offer was from her own brother which was a fact she failed to mention when she initially referred to the job and her new employer.

7. Notwithstanding the contradictions in the evidence, the First-tier Tribunal found at paragraph 15:

"Although the details provided by the sponsor were unclear and at times inconsistent, I accept her account that her knowledge of the job was limited because she had left all the details to her husband and the appellant. I note however that it was clear from her evidence that securing the new job solves her childcare concerns. I therefore accept that the sponsor's account of the job offer is credible."

8. I consider that the finding of the First-tier Tribunal that the job offer was credible was inadequately reasoned as it fails to adequately reconcile the clear contradictions in the evidence. The finding that her knowledge of the job was limited because she had left the details to others does not adequately explain the contradictions in her own evidence in relation to when she became aware of the job offer. The error is material because it cannot be said that the outcome would have been the same were the finding adequately reasoned.

The re-hearing

9. The parties agreed that the matter could be re-heard at the same hearing as contemplated by the directions sent to the parties with the notice of hearing.
10. The Claimant had submitted a bundle of documents under cover of a letter dated 22 January 2016 including the sponsor's payslips and bank statements for the period February to December 2015. The sponsor confirmed that the employment continued.
11. Mr Mills had nothing he wanted to ask and submitted that there was no specified evidence requirement. He submitted that it was a matter for me as to whether the evidence satisfied the burden of proof. In the light of the evidence regarding the EEA national sponsor's employment I indicated that I would allow the appeal.
12. The sole issue in this appeal is whether the Claimant's EEA sponsor is a qualified person for the purposes of Regulation 6 of the EEA Regulations. The relevant date for the consideration of the evidence is the date of the hearing. At the date of the initial hearing before the First-

tier Tribunal the Claimant relied on a job offer as proof of the required status. However, the Claimant has now adduced evidence in the form of the sponsor's contract of employment with Mohamed Sabeer Zinna Trading as Isobel London, payslips for the period February 2015 to December 2015 and bank statements for the same period showing salary payments in the same amount as shown on the payslips. I am satisfied on this evidence that the Claimant has discharged the burden of showing on the balance of probabilities that the EEA sponsor is a worker and therefore a qualified person. The appeal should therefore be allowed.

13. I therefore set the decision aside and remake it in those terms.

14. There was no application for anonymity and no direction is appropriate on the evidence.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by allowing it.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge L J Murray