



IAC-FH-CK-V1

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

Appeal Numbers: IA/50574/2014
IA/50575/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 January 2016**

**Decision & Reasons Promulgated
On 28 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SANTHA NATARAJAN
BALAJI NATARAJAN
(ANONYMITY ORDERS NOT MADE)**

Respondents

Representation:

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondents: Mr A Briddock of Counsel instructed by Bar Pro Bono Unit

DECISION AND REASONS

Background

1. These are linked appeals against the decisions of First-tier Tribunal Judge Whalan promulgated on 23 July 2015, brought with the permission of First-tier Tribunal Judge Frankish granted on 5 November 2015.

2. Although before me the Secretary of State for the Home Department is the appellant and Mrs Natarajan and Mr Natarajan are the respondents, for the sake of consistency with the decision of the First-tier Tribunal I shall hereafter refer to Mrs Natarajan and Mr Natarajan as the Appellants and the Secretary of State for the Home Department as the Respondent.
3. Both Appellants are citizens of India. The First Appellant was born on 15 March 1946 and is the mother of the Second Appellant, who was born on 19 June 1972. The Second Appellant is married to Mrs Deivanayaguy Periassamy ('the sponsor'), a French national born on 7 December 1971. Both the Appellants entered the United Kingdom on the basis of permits granted to them as family members of an EEA national. The Second Appellant entered in November 2003: his mother later joined him in the United Kingdom where she has lived with the Second Appellant and his wife since October 2004.
4. As noted, both Appellants have previously had the benefit of residence permits under the Immigration (European Economic Area) Regulations 2006. In September 2014 they both applied for permanent residence on the basis of having completed five years' residence in the United Kingdom under the Regulations. Their applications were refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 3 December 2014, and Notices of Immigration Decisions were issued on the same date.
5. The Appellants appealed to the IAC. Their appeals were allowed by the First-tier Tribunal Judge for reasons set out in his decision.
6. The Secretary of State now seeks to challenge the conclusions of the First-tier Tribunal Judge.

Consideration

7. The key issue before the First-tier Tribunal Judge was whether or not the sponsor was a qualified person within the meaning of regulation 6 of the 2006 Regulations.
8. The First-tier Tribunal Judge heard evidence from each of the Appellants and also from the sponsor. The Judge summarised the evidential materials, the oral testimonies, and issues before him in his decision. Then, from paragraph 25, he set out his findings and reasons. In this regard the Judge identified the key issue at paragraph 27, and further reduced that issue to its core element at paragraph 28. The determinative reasoning and findings of the Judge are set out at paragraph 28, which is in these terms:

"The Appellants' submissions are set out in a detailed and very helpful skeleton argument filed by Ms Jaquiss [who appeared instructed by the Bar Pro Bono Unit before the First-tier Tribunal]. My findings of fact are that Mrs Balaji has been 'a worker' since March 2012, a period of just over 3 years. The issue, therefore, is whether she was a jobseeker (6(1)(a)) for two years or so before that time. It is not necessary for an individual to claim Job Seeker's Allowance (or the equivalent benefit) in order to be classified as a jobseeker: **TG v SS for Work and Pensions [2015] UKUT 0050 (AAC)**.

It is stated often that after 6 months a jobseeker loses that status but in **AG and others (EEA - jobseeker - self-sufficient person - proof) Germany [2007] UKAIT 00075**, the Tribunal concluded that 'there is no sufficient timeframe'. This status can endure for a 'reasonable period' and what is reasonable will depend 'ultimately on the particular circumstances of the person concerned'. I have accepted the evidence of Mrs Balaji, corroborated by the Second Appellant, her husband, that she was actively looking for work over this period, but that she was unsuccessful. She has produced (at pp 70 and 71) letters of refusal dated 14th December 2009 from Rana Mobiles & Games and 20th August 2010 from Strategex Accounts & Management Consults, showing that she was engaged in an active job search. The Appellants bear the burden of proof in this case and the validity of this documentation was not challenged by the Respondent. The Strategex letter is significant particularly as this has been Mrs Balaji's employer since March 2015. Clearly, therefore, Mrs Balaji has exhibited an active interest in this company for many years."

9. The Judge went on in the following paragraph to conclude that on the balance of probabilities the Appellants had demonstrated that the sponsor was a 'qualified person' under regulation 6 for at least the last five years prior to both the date of the applications in September 2014 and the date of hearing in June 2015. The appeals were allowed on that basis, the Judge concluding that both Appellants were entitled to permanent residence cards.
10. The Respondent contends that the First-tier Tribunal Judge erred in respect of the application of regulation 6(6) of the EEA Regulations.
11. Regulation 6(4) provides:

"For the purpose of paragraph (1)(a), a 'jobseeker' is a person who satisfies conditions A and B and where relevant C."

Ms Fijiwala acknowledged that condition C was not relevant, and conceded that condition A was made out. What was in issue, she contended, was condition B. Condition B is defined in Regulation 6(6) in the following terms:

"Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged."

In this context the focus necessarily was on the period of time prior to the sponsor resuming employment in March 2012, and in particular that she would need to demonstrate a period of being a jobseeker from July 2010.

12. The Secretary of State argues: firstly, that there was no adequate evidential basis for the Judge to conclude that the sponsor was indeed seeking a job; and secondly, that the Judge had not engaged with the second limb of Regulation 6(6), that of "*a genuine chance of being engaged*".
13. In respect of the first of these submissions the Secretary of State places particular emphasis on the fact that only two job rejection letters had been

produced - it was argued that this was not a sufficiently strong evidential basis to support a conclusion of actively seeking employment throughout the relevant period.

14. It is to be noted, however, that the conclusion of the Judge was not based solely on the existence of the two rejection letters. The Judge says in terms that he accepted the evidence of the sponsor corroborated by the evidence of the Second Appellant: necessarily that was a reference to the testimonies of the witnesses both by way of their witness statements - which refer to the fact of seeking employment (in the case of the Second Appellant at paragraph 7 of his witness statement, and in the case of the sponsor at paragraph 8 of her witness statement) - and their oral evidence (see in particular paragraphs 11 and 19 of the decision of the First-tier Tribunal Judge).
15. As Mr Briddock points out, there was no Presenting Officer before the First-tier Tribunal and so there was no express challenge to the oral testimony and the written testimony of the witnesses. It is to be noted that the Judge found all of the witnesses before him to be credible, and in those circumstances in my judgment it was clearly open to the Judge to conclude that the two rejection letters were part of a body of evidence that provided an adequate foundation for the finding that the sponsor had been actively seeking work throughout this period - and in that regard it is safe to say that that period must be considered to have commenced at the latest by 14 December 2009, which is the date of the first of those two letters.
16. In my judgment the finding of the Judge in this regard was based on the totality of the evidence before, was supported by that unchallenged evidence, and was adequately reasoned in the decision. I find no error of law in this regard and reject this aspect of the challenge of the Respondent.
17. It is to be acknowledged that the issue in respect of "*a genuine chance of being engaged*" is less clear-cut. There is no overt reference to this second limb of regulation 6(6) in the decision of the First-tier Tribunal Judge.
18. Mr Briddock highlights that it was nonetheless clearly an issue before the Judge and clearly addressed in the course of the Appellant's submissions. In this regard in particular my attention is directed to the Skeleton Argument that was before the First-tier Tribunal, settled by Ms Jaquiss, and in particular paragraph 31, which is in these terms:

"Nevertheless, Mrs Balaji did have a genuine chance of being engaged during the relevant time. She had held two jobs previously. It is testament to the fact she was both a genuine jobseeker and had a genuine chance of being engaged that she in fact did find work in the UK on three occasions."
19. As is indicated in the citation already made above from paragraph 28 of the First-tier Tribunal Judge, the Judge clearly had in mind the contents of

the Skeleton Argument. He says in terms that it was “*detailed and very helpful*”.

20. I have invited both representatives to offer any assistance from relevant case law as to what might be meant by a ‘genuine chance of being engaged’. Neither was able to direct my attention to anything specific that addressed that particular phrase.
21. Be that as it may, it seems to me that ‘a genuine chance’ means that the prospects of employment must be more than merely fanciful or theoretical, but must in some way be reasonable or realistic.
22. Further to this, some contextual assistance is, in my judgement to be gleaned from the case of **AG and others** cited by the Judge at paragraph 28 – albeit cited in respect of the ‘reasonable period’ of time for which somebody could retain the status of a ‘jobseeker’. The complete passage in **AG** to which the Judge made brief reference is as follows:

“We are aware that some commentators have seen the court in **Antonissen** as having settled definitively that there is a six months’ time limit after which a jobseeker ceases to be a worker. We think that goes too far: there is no specific timeframe. The court in **Antonissen** only settled that a member state is entitled to treat such a time limit as a being generally a reasonable one. Furthermore, it is clear that the court considers that what is a reasonable period will depend ultimately on the particular circumstances of the person concerned.”
23. In my judgement the evaluation of a ‘reasonable period of time’ will generally necessitate inclusion of consideration of the particular circumstance of the concerned person’s prospect of being engaged. There is an interrelationship between the concept of having a genuine chance of finding employment and the reasonableness of the period of time for which an individual is looking.
24. The First-tier Tribunal Judge in this case clearly considered that, notwithstanding the length of time between the commencement of looking for employment and finding employment, the sponsor was still a jobseeker within the meaning of the Regulations. Inherent in that finding is that the Judge did not consider that the sponsor had exceeded a reasonable period in her search for work. In my judgement, yet further inherent in the conclusion in respect of ‘reasonable period’ is the notion that the sponsor continued to have a genuine chance of being engaged. If the circumstances were such that there was no realistic prospect of finding employment, then the Judge would have been driven to conclude that a reasonable period had been surpassed. Conversely, the fact that the Judge considered that the reasonable period extended throughout the period of searching is, in my judgment, an indication that had the Judge expressly turned his mind to this issue he would have been satisfied that the sponsor was indeed a person with a genuine chance of employment.

25. I note that both representatives when invited to comment on how this case might be dealt with in the event of a finding of error of law suggested that I should invited me in effect make a fresh decision on the available materials. Had that been necessary I would very likely have reached the conclusion without more that the sponsor was indeed a person with a genuine prospect of finding employment during the relevant period, essentially for the reasons set out in the Skeleton Argument before the First-tier Tribunal (quoted above). I recognise what has been said about the length of time that it took to find work and the explanation for the delay offered in the testimonies of the sponsor and the second Appellant to the effect that this was a period of recession: nonetheless, even in a period of recession individuals can retain a genuine chance of being engaged in employment, and on balance I am satisfied that that was the circumstance here.
26. Be that as it may, I do not find in all of the circumstances that it is necessary for me to remake this decision. I am prepared to conclude that the absence of any overt reference to a genuine chance of being engaged did not amount to a material error of law, because the Judge's finding that the sponsor did not exceed a reasonable period in seeking employment encompassed in substance a finding that there was a realistic chance of finding such employment during that search.

Notice of Decision

27. The decision of the First-tier Tribunal contained no material error of law and stands.
28. The appeal of the Secretary of State is dismissed.
29. No anonymity orders are sought or made.

The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.

Signed:

Date: 27 January 2016

Deputy Upper Tribunal Judge I A Lewis