



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33809/2015

THE IMMIGRATION ACTS

Heard at: Manchester
On: 7th June 2017

Decision & Reasons Promulgated
On 13 June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Rana Ali Raza
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mrs Chawdhery, Counsel instructed by Mellor & Jackson
Sols
For the Respondent: Mr Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan, born in 1982. He has permission¹ to appeal against the decision of the First-tier Tribunal (Judge Wedderspoon) to

¹ Permission granted by Deputy Upper Tribunal Judge Chapman on the 11th February 2017

dismiss his appeal with reference to the Immigration (European Economic Area) Regulations 2016 ('the Regs').

2. Mr Raza sought a residence card confirming a permanent right of residence under Regulation 15(1)(b) of the Regs. The only matter in issue before the First-tier Tribunal was whether he could establish an entitlement to such a card by showing that his EEA national wife, Ms Melinda Tarr, had been exercising treaty rights for a continuous period of five years. The Secretary of State for the Home Department had found there to be insufficient evidence that she had been economically active throughout that period and so had refused to issue the card.
3. The refusal letter was dated the 19th October 2015. The Appellant exercised his right of appeal and on the 5th May 2016 the First-tier Tribunal issued directions which *inter alia* stated:

"The Appellant must send copies of all documents to the Tribunal and to the other party a bundle of all documents you wish to rely on in support of the appeal...."

4. On the 23rd May 2016 the parties were notified that the hearing was to take place on the 19th July 2016.
5. On the 19th July 2016 the Appellant and his wife attended the First-tier Tribunal accompanied by their legal representative. At paragraph 22 the determination reads as follows:

"Towards the end of the submissions the Appellant stated that he had further documents he wished the Tribunal to consider. These documents labelled exhibit A1 had not been disclosed to the Home Office before now. Miss Johnstone [the HOPO] was given time to consider these but submitted that they were introduced too late in the day and she had not had the opportunity to check them out...."

The determination continues, at paragraph 25:

"I considered the directions in this case given on 5th May 2016. This directed the Appellant to send copies of all documents relied upon to the Tribunal and the other party. This had not been complied with. Further I had not heard any direct witness evidence from the Appellant's spouse about this material. The Respondent had no time to check the documents now relied upon. Taking into account the overriding objective and balance of prejudice to the parties, I decided not to consider this evidence on the basis that the documents were available since the beginning of June 2016; they were disclosed very

late; there was no adequate explanation as to why the solicitor had not included the documents in the disclosed bundle; the respondent had inadequate time to check its veracity; no evidence had been called to corroborate it. I consider the prejudice to the Respondent outweighed that of the Appellant who could make a further application on the basis of this material if this appeal was unsuccessful”.

6. The First-tier Tribunal dismissed the appeal, agreeing with the Secretary of State that there was insufficient evidence that Ms Tarr had been economically active.
7. The Appellant’s representatives have now sought, and obtained, permission to appeal on his behalf on the grounds that the First-tier Tribunal acted unfairly in refusing to look at the documents in question. It is submitted that the documents at A1, comprising HMRC records covering the whole five-year period, would have been determinative of the appeal, and it was plainly unjust to exclude them.
8. Mr Harrison for the Secretary of State does not dispute that the documents were capable of being determinative in the appeal. He nevertheless resists the appeal before me. He submits that the First-tier Tribunal gave very good reasons for not admitting this evidence and that there was no material error of law arising from its refusal to do so.

My Findings

9. I am bound to observe that I find it to be surprising that the Appellant has pursued this appeal. He is the family member of an EEA national who presently has a recognised right to reside in this country under Reg 7. He can make an application at any time under Regulation 15, and pay a minimal fee for doing so (Mr Harrison thought the fee to be something in the region of £65). I have been presented with a 446 page bundle of evidence all going to his wife’s economic activity. This includes the material that the First-tier Tribunal refused to look at. It seems to me that the more straightforward – and considerably cheaper – course of action would have been for Mr Raza to make a new application, this time supported by this very great volume of evidence.
10. Turning to the merits of the appeal, the only ground pursued before me was whether or not the First-tier Tribunal acted irrationally/unfairly in refusing to admit the bundle marked ‘exhibit A1’.
11. I find there to be no error of law in the approach taken.

12. First of all, it is clear from the chronology that the Appellant's representatives knew the case against him since as long ago as October 2015. Directions were given in May 2016. The parties had eight weeks' notice in advance of the appeal. The First-tier Tribunal determination states that "no adequate explanation" was given for their very late appearance; as far as I can see no reason at all has been advanced. It is clear from the face of the documents themselves that Ms Tarr did not seek to obtain her tax records until the 8th June 2016. The letter, and enclosures, that comprise exhibit A1 were sent out by HMRC that day. They could therefore have been supplied to the Respondent, and Tribunal, in compliance with directions and in good time for the hearing. Not only were those directions ignored, the Appellant's representative then apparently attempted to introduce the bundle during the course of submissions, when the evidence had already been closed and the Home Office Presenting Officer had already made her case. In these circumstances it can hardly be said that the Appellant was prejudiced by the Tribunal's failings.
13. Secondly, the First-tier Tribunal has given a number of perfectly good reasons why it took the decision that it did. Those reasons, set out above, do not disclose any material error of law.
14. The appeal is therefore dismissed.

Decisions

15. The determination of the First-tier Tribunal contains no error of law and it is upheld.
16. There is no order for anonymity.

Upper Tribunal Judge Bruce
7th June 2017