



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09276/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 June 2018

Decision and Reasons Promulgated
On 20 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

HARUNA ALHASSAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER NEW DELHI

Respondent

Representation:

For the Appellant: Mr S Kotas (Home Office Senior Presenting Officer)
For the Respondent: No appearance (skeleton argument from SLA Solicitors)

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the First-tier tribunal decision of 8 March 2018 to allow the appeal of Haruna Alhassan, a citizen of Ghana born 20 February 1968, against the decision of 23 October 2017 refusing his application for an EEA residence card as the former spouse of an EEA national from he was now divorced.
2. Mr Alhassan married Ms Sanfro-Deprez on 20 July 2011. They subsequently divorced, the decree absolute being issued on 17 November 2016. It was his case that he had resided in the UK as the spouse of an EEA national exercising Treaty rights here for more than five years. The application was supported by payslips and P60s for Ms Sanfro-Deprez's employment from April 2012 to November 2016.

3. The Secretary of State accepted the fact of the marriage pursuant to a genuine relationship and the divorce, but the application was refused because of a lack of evidence as to Ms Sanfro-Deprez's nationality and her status in the UK. Additionally the refusal letter expressed dissatisfaction as to her earnings history: interagency checks had not recorded her paying the national insurance contributions that would be expected.
4. The appeal was determined without a hearing. The First-tier tribunal made findings of fact having reviewed evidence including an email exchange between the Appellant and Ms Sanfro-Deprez regarding the need for her to provide proof of her earnings in the UK. It concluded that there was no reason to doubt the authenticity of the documents before it and allowed the appeal on the basis that it was established that Ms Sanfro-Deprez had been a qualified person for five years and the Appellant had therefore been a family member for the requisite period, acquiring permanent residence in the UK from 18 August 2016.
5. Grounds of appeal of 28 March 2016 argued that the First-tier tribunal had overlooked the element of the refusal letter that raised the issue of the negative interagency checks. Permission to appeal was granted on 23 April 2018 on the basis that this was an arguable error of law.
6. Mr Kotas made an application under Rule 15A to put forward the checks by HMRC which underlaid the Home Office refusal letter. The letter in question recorded no employed earnings for Ms Sanfro-Deprez for the tax years from April 2014 to 2016; for the year ending April 2013 she had worked for Steeles Professional Cleaning Services.
7. SLA Solicitors wrote on 23 March 2008 explaining that they would not be attending the hearing; their client could not afford legal representation beyond written submissions. They applied to adduce further evidence under Rule 15A by way of a letter from HMRC of March 2016 to Ms Sanfro-Deprez recording her registration for self-assessment. This letter was confirmation that a self assessment record had been set up for her and that she needed to complete a tax return. The Appellant emailed Ms Sanfro-Deprez on 10 May 2018 asking her whether she knew why her work would not be confirmed by HMRC. An email of 14 May 2018 recorded Ms Sanfro-Deprez's reply covering email:

"I thought I asked you not to contact me again. You have a new family and so do I so let us move on! With regards to the payslip, all that I gave to you were those given to me by me employer. You know perfectly well that I was working at the time and where I worked. I am tired of your questions regarding this issue. I do not have any more answers for you. Sorry!"
8. A skeleton argument for Mr Alhassan observed that the Secretary of State had never supplied a bundle of supporting evidence. The history of the case included the fact that in May 2012 Ms Sanfro-Deprez had supported the Appellant's residence card

application, and following a marriage interview the Secretary of State had accepted the genuineness of their relationship and issued the appropriate residence card.

9. Mr Kotas submitted that there was a material error of law and invited the Tribunal to determine the appeal finally based on all the material now before it.

Findings and reasons

10. It seems to me that there was a material error of law, given that the Secretary of State had made a distinct allegation which the First-tier Tribunal wholly overlooked. A party is entitled to have a response to a substantive submission. It might be said that the Secretary of State's case deserved limited attention given the failure to provide the underlying material at the First-tier Tribunal stage, but on the other hand, it is in the public interest that immigration (including EEA) applications receive appropriate scrutiny.
11. So I find there was a material error of law which undermines the conclusions of the First-tier Tribunal. I proceed to determine the appeal substantively.
12. I considered it was appropriate to admit the further evidence from both sides. The material from SLA Solicitors had been appropriately notified before the hearing and arguably assisted Mr Alhassan's appeal. The material from the Secretary of State was equally relevant and its existence had long been foreshadowed via its citation in the October 2017 refusal letter; any disadvantage to Mr Alhassan not being able to see its express wording at the hearing is due to his absence. I do not consider that its contents are materially different to the summary of them provided in the refusal letter, so it is very difficult to see any material disadvantage to Mr Alhassan.
13. The evidence from Mr Alhassan's side is essentially his witness statement evidence and the potentially corroborative evidence of his Sponsor's work: pay slips giving her National Insurance number, for Premier Care Plan Ltd from May 2012 to March 2014, and for work with Nightingale Premier (South) Care Homes Ltd from October 2014 to March 2016.
14. It seems to me that on balance of probabilities the evidence of Mr Alhassan is to be preferred. The material from HMRC potentially undermines his evidence, of course. However, I am concerned that that enquiry is essentially a "nil return" based on a search of electronic records giving some of the Sponsor's details, rather than overt corroboration that dishonesty has been used. Anyone who has interacted with electronic record keeping will be aware of the fact that a nil return may be down to imperfectly entered records, or a failure to adequately transcribe every relevant detail when interrogating a database, rather than overt dishonesty.
15. The fact that the Sponsor has provided a registration for self-assessment also indicates that the basis of her work may well have been on a self-employed rather than an employed basis. The HMRC evidence aside, I have no material before me from which to draw an inference that the Appellant or his former wife is of bad

character. There is also the material such as the email cited above which to my mind has the ring of truth, in terms of a former partner giving some assistance, albeit limited and somewhat resentful.

16. Overall I prefer the evidence of the Appellant and Ms Sanfro-Deprez to that of the Secretary of State. I accordingly allow the appeal on the basis that the Appellant has established that he is entitled to recognition of his right of permanent residence based on having accumulated five years' lawful residence under the EEA Regulations as the family member of a qualified person.

Decision:

The decision of the First-tier Tribunal contains a material error of law and is set aside. Upon reconsideration, the appeal is allowed.

Signed:

Date: 8 June 2018

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes