



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

Appeal Number: EA/02942/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On Friday 11 January 2019

On 25 January 2019

Before

**UPPER TRIBUNAL JUDGE RINTOUL
UPPER TRIBUNAL JUDGE SMITH**

Between

**MR ADEYINKA ROTIMI ADELEYE
(anonymity direction not made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not appearing nor represented

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Roopnarine-Davies promulgated on 14 June 2018 (“the Decision”) dismissing his appeal against the Respondent’s decision dated 29

March 2018 refusing him a residence card as the family member (spouse) of an EEA (Polish) national, Miss Apanasewicz. The reason for the Judge's dismissal of the appeal is that there was insufficient evidence that Ms Apanasewicz was exercising Treaty rights in the UK at all relevant times ([3] of the Decision).

2. The Appellant challenges the Decision on two grounds. First, he says that the Judge erred in requiring the Appellant to produce a payslip for May 2018 when he was required to lodge his bundle so that it was received by 21 May 2018 by which time the May payslip would not be available. Second, he submits that the Judge erred by not considering in the alternative if Ms Apanasewicz was nonetheless exercising Treaty rights as a jobseeker based on the offer of employment letter which appears at [AB/21-122].
3. Permission to appeal was granted by First-tier Tribunal Judge Foudy in the following terms so far as relevant:
 - “... 3. In the decision the Judge made findings on the question of whether the EEA national was a “worker” within the Regulations. However, it is arguable that she attached insufficient weight to the evidence adduced by the Appellant, such as to amount to an error of law. It is also arguable that the Judge failed to consider other aspects of the exercise of Treaty rights, including job seeking.
 4. The grounds disclose an arguable error of law.”
4. The matter comes before us to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.
5. On 9 January 2019, Mr Deller on behalf of the Respondent informed the Tribunal by e mail that, following a further application, the Appellant has been granted a residence card on 6 September 2018. Unfortunately, Mr Deller had only just been made aware of this and was unable to resolve the appeal by agreement with the Appellant as the Appellant does not have legal representatives. Mr Deller had no address for correspondence with the Appellant. Mr Deller went on to say that “[f]or what it is worth my provisional view had been sympathy with the grounds on which permission was granted”.
6. No doubt due to the Appellant having obtained the residence card which he sought, he did not attend the hearing and was therefore unrepresented before us. Mr Deller accepted that the granting of a residence card does not lead to statutory abandonment of the appeal in the same way as does the grant of leave to remain due to the wording of the statute.
7. We discussed with Mr Deller the ways in which the appeal might be resolved in the Appellant's absence. In light of the fact that Mr Deller accepted that the grounds of appeal might have merit and that the

Respondent has since been persuaded that the Appellant is entitled to a residence card as the spouse of Ms Apanasewicz, Mr Deller conceded that there is a material error of law in the Decision, that it should be set aside and that the appeal should be allowed.

DECISION

Based on the Respondent's concession and our own review of the evidence, we are satisfied that the Decision contains a material error of law. The Appellant could not have produced any later payslips due to the date of filing of evidence and the offer letter issued to Ms Apanasewicz for new employment beginning on 1 May 2018 is evidence that (at the very least) she was a jobseeker at that time.

The decision of First-tier Tribunal Judge Roopnarine-Davies promulgated on 14 June 2018 is set aside.

We re-make the decision. For the above reasons and based on the Respondent's concession, we allow the Appellant's appeal. The Appellant has already been granted the residence card which he seeks.

Signed
Upper Tribunal Judge Smith



Dated: 11 January 2019