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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/24629/2014
IA/24614/2014
IA/24632/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 14 October 2015	**On 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

UZMA GHANZANFAR (1)
HAROON GHANZANFAR BUTT (2)
AENA GHANZAFAR BUTT (3)
(NO ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr Tarlow, Home Office Presenting Officer
For the Respondent: Mr Ell, Counsel

DECISION AND REASONS

1. The respondents to this appeal are citizens of Pakistan born on 16 March 1976, 3 March 2009 and 11 July 2005 respectively. They are a mother and her children so

their appeals have been linked and heard together. The appellant is the Secretary of State for the Home Department, who has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal M A Khan, allowing the respondents' appeals against decisions of the Secretary of State, dated 2 June 2014, to refuse to issue residence cards as confirmation of their rights of residence as the family members of Mr Ghanzanfar Amin, a Portuguese national born on 19 October 1963 ("the sponsor"). Residence cards were refused because the Secretary of State was not satisfied by the evidence submitted with the applications that the sponsor was exercising Treaty rights and was therefore a 'qualified person' for the purposes of Regulation 6 of the Immigration (EEA) Regulations 2006. The judge heard oral evidence from the sponsor and considered the documents submitted. He was satisfied the sponsor was exercising Treaty rights and allowed the appeals.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. I shall therefore refer to the members of the family from now on as "the appellants" and the Secretary of State as "the respondent".

3. I was not asked and saw no reason to make an anonymity direction.

4. The respondent sought permission to appeal on the grounds that the judge failed to make adequate findings as to whether the sponsor was exercising his Treaty rights as at the date of decision. Judge of the First-tier Tribunal Colyer, granting permission to appeal, said it was arguable that there was insufficient documentation before the judge to make a finding on this point.

5. I heard argument on the question of whether the judge's decision is vitiated by material error of law.

6. Mr Tarlow simply relied on the grounds seeking permission to appeal. Mr Ell argued it was clear from the decision read as a whole that the judge had in mind the task of deciding whether the sponsor was working as at the date of decision. He argued the judge was entitled to come to the conclusion he reached based on the documents before him. In reply, Mr Tarlow maintained the judge's reasoning was inadequate.

7. Having considered the matter, I find the judge did not make a material error of law such that his decision allowing the appeals should stand. My reasons are as follows.

8. At first blush there are difficulties with the decision. In paragraph 23 the judge notes the sponsor submitted two documents from HMRC, one of which (a P60) showed the sponsor earned £5376 in the 2013/2014 tax year and another (a letter) stated he earned £13781 in the same tax year. The judge notes the sponsor's explanation that the discrepancy between the two figures was explained by the fact he had more than one job. However, the judge notes there were also discrepancies on the pay slips provided. The judge concludes his reasoning in paragraph 24:

> "However, one thing is clear from the documentary evidence in the form of the P60 and the letter from the HMRC that [the sponsor] … has been engaged in employment and has earned the amounts claimed and which are reflected in the HMRC letter,

> which shows the higher figure and the P60 [which] shows a lower sum. The issue before the Tribunal is whether the EEA national family member has been exercising Treaty rights … Although there are matters which [the sponsor] was unable to explain, there is evidence before me that he was engaged in economic activity as an employee throughout the relevant period."

9. Three times in that paragraph the judge uses a past tense to refer to the sponsor's employment and then he refers to a "relevant period", without defining it. He also uses "was" in the next paragraph. Moreover, by linking his findings to the HMRC documents he is manifestly relying on evidence of a previous period.

10. In my judgment, what saves the decision is the fact the judge can be taken to have looked at the evidence filed in the slim bundle provided by the appellants and there are documents in that bundle which show very clearly that the sponsor's employment continued past April 2014 and continued until April 2014, shortly before the hearing on 1 May 2015. The judge referred to the bundle in paragraph 7 of his decision. The sponsor provided his Barclays bank statements and the last income entry was as recent as 13 April 2015. The reference on the statement reads: "Received from "Pride West Limited Ref Mar 15 Salary". There was a similar credit on 13 March 2015 for the February 2015 salary payment from West Pride Ltd. There are also regular credits in respect of Work and Child Tax Credits. The net salary from West Pride Ltd was around £622. This is not "marginal or ancillary" employment and establishes the sponsor was a worker and therefore a 'qualified person' as at the date of hearing.

11. I find therefore that the decision of the First-tier Tribunal does not contain a material error of law of the kind contended by the respondent. Accordingly it shall stand and the respondent's appeal is dismissed.

NOTICE OF DECISION

The First-tier Tribunal did not make a material error on a point of law and its decision allowing the appeals under the Immigration (EEA) Regulations shall stand.

No anonymity direction has been made.

Signed **Date 16 October 2015**

Judge Froom, sitting as a Deputy Judge of the Upper Tribunal