



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

Appeal Number: IA/27662/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 21 January 2015**

**Decision & Reasons
Promulgated
On 3 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MUTAIRU AKINKUNMI KOLAPO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith, instructed by Adonai Beulah, solicitors
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Mutairu Akinkunmi Kolapo was born on 15 November 1971 and is a male citizen of Nigeria. He had applied to the respondent for permanent residence as confirmation of his right to reside in the United Kingdom but his application was refused by a decision dated 19 June 2013. He appealed to the First-tier Tribunal (Judge Chana) which, in a determination promulgated on 27 May 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is married to Jutta Muller-Cinar, a German national who was born on 13 August 1952. The couple married in Lagos in May 2005. The application and appeal turned on the question of the exercise of Treaty Rights by the appellant's wife (see Regulation 15(1) of the EEA 2006 Regulations). The refusal letter dated 19 June 2013 recorded that the appellant had "provided bank statements for the period February 2007 to October 2008" but noted that these did not refer to a business bank account for the wife but, rather, her personal account. Judge Chana [6] appears to have adopted the assessment of the evidence submitted to the Secretary of State. At [17], the judge noted the documents which had been submitted by the appellant in respect of his appeal (dealt with on the papers) as opposed to those submitted with the application. She recorded that "[the appellant] also states that the bank statements were from February 2007 and 2008 (sic) and from 24 January 2012 until 17 April 2012. The appellant has therefore accepted that he did not provide bank statements for the full five years." The judge went on to conclude that "in the absence of this evidence the appellant has not proved to a balance of probability that his wife has been economically active in this country for five years."
3. The grounds of appeal [3] note that the paragraph of the appellant's witness statement [14], upon which Judge Chana had based that latter statement, had done little more than to detail the documents which had been submitted with the application; the grounds of appeal aver [4] that, "all the five years bank statements of the sponsor were submitted with the appeal bundle as stated in paragraph 9 of the skeleton argument and the submission of the appellant."
4. I was assisted by Ms Smith of Counsel who had, unfortunately, not, in turn, been assisted by those instructing her who had sent the papers to her at very short notice and within inadequate instructions. Ms Smith was, however, able to clarify the position by reference to the bundle of documents before the First-tier Tribunal. From what I was shown by Miss Smith, I am satisfied that the appellant had provided full bank statements for his wife for the five year period prior to the submission of his application save for the omission of statements for the period October 2008-April 2009. What is more, the statements had (apart from that gap) covered the period February 2007 to September 2013, that is considerably longer period than five years. A large number of invoices relating to the sponsor's business also appeared in the bundle of documents [163-242] together with tax returns (and tax calculations) for the inclusive period 2007-2013.
5. I am satisfied that the judge has fallen into error by failing to have proper regard to material evidence before her. Her conclusion (that the sponsor could not show the exercise of treaty rights by her for a continuous period of five years prior to the date of the application) was based on an incomplete assessment of the evidence and cannot stand. I set aside her determination accordingly.

6. The question, therefore, remains as to whether the sponsor has provided sufficient evidence to show that she was exercising treaty rights throughout the material period. I am satisfied that she has done so. It is unfortunate that there is a gap in the bank statements but it is important that the Tribunal considers the evidence as a whole. Had the bank statements been the only financial evidence relating to the sponsor's business activities, the missing statements may have been problematic. However, I have other, relevant documents including the tax returns and calculations and National Insurance statements. Looking at all that evidence as a whole, I am satisfied, to the standard of the balance of probabilities, that the appellant's wife was exercising treaty rights throughout the material period of five years. In consequence, the appellant's appeal should be allowed.

DECISION

The determination of the First-tier Tribunal which was promulgated on 27 May 2014 is set aside. I have remade the decision. The appellant's appeal against the decision of the respondent dated 19 June 2013 is allowed.

No anonymity direction is made.

Signed

Date 22 January 2015

Upper Tribunal Judge Clive Lane