



IAC-FH-CK-V1

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

Appeal Number: IA/23458/2014

THE IMMIGRATION ACTS

Heard at Field House

On 21 March 2016

**Decision & Reasons
Promulgated
On 12 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR RAJA IMRAN AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Ms S Sreeraman, Home Office Presenting Officer
For the Respondent: Mr A Chohan, Counsel, instructed by Immigration
Chambers

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 16 July 1979. He appeals to the Upper Tribunal with permission from Judge of the First-tier Tribunal (FTT) Ford against the decision of Judge of First-tier Tribunal Cooper (the Immigration Judge) to allow the appeal under "the Regulations". Judge Ford considered that there was an arguable error of law in that the

Immigration Judge had appeared to be persuaded that, at the date of the hearing, that the sponsor was employed as claimed. However, the Immigration Judge had not apparently mentioned the fact that appellant appeared to have been employed by the same person who provided evidence as her accountant; thus rendering the evidence potentially unreliable.

2. Ms Sreeraman explained that the decision appeared to have contained an inconsistency between a finding at paragraph 26 (that the documents showing that the appellant was employed by a company called Evolve caused the judge to be taken aback because they appeared to be the same format and typeface as those produced by the appellant's accountant) and paragraph 27 (where there was an apparent acceptance of the sponsor's employment by that employer). The two appeared to be inconsistent.
3. Very fairly, Mr Chohan, who represented the appellant in the FTT and the Upper Tribunal, acknowledged that the hearing before the FTT was a float hearing and that the Immigration Judge had limited time to consider the file before commencing the hearing. Indeed, I note from paragraph 26 of the decision that the appellant's only attempted to serve the documents in support of the appellant's appeal on the respondent two or three days before the hearing and that Mr Bose, who represented the respondent at that hearing, had no proper opportunity to consider them. Ms Sreeraman also accepted that the Presenting Officer, who has provided her with a note which she has handed in to me and which I shall attach to the file, had to prepare the case without any opportunity to read the papers. It seems that there was a missing file, as sometimes occurs in these cases.
4. Therefore, it seems that only Mr Chohan was ready for the hearing and given that evidence in the FTT was probably served on the respondent far too late (the normal rule being that it has to be served at least seven days before a hearing) that the respondent did not have a proper opportunity to put its case at the hearing. Mr Bose cross-examined the appellant and sponsor at the hearing, and I have read out a note of the cross-examination as recorded by the Immigration Judge. However, unfortunately, the Immigration Judge did not consider all the documents handed in as fully as he should have done before reaching his decision. This probably would have occurred if the respondent had a proper opportunity to consider them. Had those documents been properly considered the FTT may well have come to a different conclusion.
5. There seems to be a degree of acceptance, reluctantly on the part of the appellant but less reluctantly on the part of the respondent, that the appropriate thing to do is to allow Judge of the First-tier Tribunal Cooper to consider the matter further both in the light of the documents that were handed in at the hearing if they are still relied upon and any updated documents relating to the sponsor's alleged employment. The reliability of

the documents adduced on the appellant's behalf needs to be carefully considered by Judge Cooper.

6. There does need to be a clear reasoned decision as to the issue identified by Ms Sreeraman whether the sponsor, as a Czech national, has been exercising Treaty rights in the UK under the EEA Regulations 2006. It is quite a straightforward point, but it does need properly determining.
7. Reluctantly, therefore, I am going to remit the matter back to the First-tier Tribunal to be listed before Judge of the First-tier Tribunal Cooper. Specific directions for the filing of evidence and for an oral hearing are to be sent out by the First-tier Tribunal, preferably sitting at Taylor House, where both parties will have an opportunity to be heard before Judge Cooper. Judge Cooper can then reconsider the documents produced before him at the last hearing as well as any updating documents going to the issue of the sponsor's employment. Judge Cooper can then make fresh findings on the issue of the extent to which the sponsor has been exercising EEA Treaty rights in the UK.
8. As a postscript, there is no appeal against the Immigration Judge's decision that Article 8 of the European Convention did not apply in these circumstances. In any event, it is highly debatable that article 8 needs to be considered in an EEA case.
9. I therefore find a material error of law and remit the matter back to the FTT.

Notice of Decision

The appeal is to the extent that the Upper Tribunal finds a material error of law in the decision of the FTT and remits the matter back to be heard by Judge Cooper in that tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

The decision by the FTT to make no fee award stands.

Signed

Date

Deputy Upper Tribunal Judge Hanbury