



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: EA/11578/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly**

**Decision & Reasons Promulgated**

**On 26 September 2017**

**On 2 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**FARHAD BIN ZAHOR**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Chaudry for Eden Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 9 June 1986 and is a national of Pakistan.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Taylor promulgated on 23 November 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 7 September 2016 to refuse him a residence card.
5. The refusal letter gave a number of reasons which were in essence that the Appellant had failed to produce adequate evidence that the EEA sponsor was exercising treaty rights.

#### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Taylor ("the Judge") dismissed the appeal against the Respondent's decision .
7. Grounds of appeal were lodged arguing: that the Judge was in error in that :
  - (a) He failed to take into account additional documents submitted under cover of a letter dated 2 August 2016
8. On 25 May 2017 First-tier Tribunal Judge Page gave permission to appeal.
9. There is a Rule 24 response dated 19 June 2017 which argued that on the basis of the material before the Judge the findings were open to him.
10. At the hearing I heard submissions from Mr Chaudhry on behalf of the Appellant that :
  - (a) The Appellant was not represented at the time of the submission of his application or the appeal.
  - (b) The documents submitted by the Appellant on 2.8.2017 in addition to what had previously been sent would have entitled the Appellant to succeed. Therefore not taking them into account made a material difference.
  - (c) The Appellant asserts that he submitted further documents after those submitted on 2 August.
  - (d) The Sponsor also had a cleaning job and referred to that in the letter of August 2<sup>nd</sup>.

11. On behalf of the Respondent Mr Bates submitted that :

- (a) He accepted that the Respondents file contained a copy of the letter of August 2<sup>nd</sup> and the documents referred to in the letter but that this did not appear to have been included in the Respondents bundle.
- (b) The Judge referred in paragraph 8 to only one bank statement being before him.
- (c) The Appellant had the opportunity to include with the grounds of appeal additional evidence to address the concerns of the Respondent or to explain matters at an oral hearing: he submitted no additional material with the grounds of appeal and chose to have a paper hearing.
- (d) The Appellant was relying on paper documents to establish his case and they had to be clear. The evidence produced now all post dates the hearing date.
- (e) While the Judge may not have had a respondents bundle which may have been a procedural error it was not material to the outcome of the case.
- (f) In relation to the cleaner job the Judge had no receipts or no bank statements to reflect payments in from the work .

12. In reply Mr Chaudhry on behalf of the Appellant submitted:

- (a) The relevant evidence was before the Judge although he could not say it with 100% certainty.
- (b) He conceded that there was no reference to an invoice book or invoices in the letter of 2 August.

**Finding on Material Error**

13. Having heard those submissions I reached the conclusion that the Tribunal made no errors of law that were material to the outcome of the case.

14. The issue in this case was whether the Appellants EEA sponsor had established by the production of adequate evidence that she was exercising treaty rights by reference to the EEA Regulations 2006. The burden of proof in this case was

upon the Appellant and the standard of proof was upon the balance of probability. The Appellant bore the burden of proof to establish any EEA right of admission or residence. In relation to the relevant date I am satisfied that in Boodhoo and another (EEA Regs: relevant evidence) [2013] UKUT 00346 (IAC) where it was held that in an EEA appeal, a tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

15. Therefore it was open to the Appellant to produce any additional evidence to establish the sponsors status up to and including the date of hearing that had not previously been produced. The Appellant appears to have implicitly accepted that he had not produced sufficient evidence as stated in the refusal letter but submitted additional evidence under cover of a letter dated 2 August 2016 that he argued should have resulted in the appeal being allowed but the Judge ignored. He was granted permission to appeal on the basis that this was arguable.
16. It is clear that the Judge did not have a Respondents bundle when he made the decision on 10 November 2016 as there is a bundle in the file which has been endorsed by him 'These respondent bundles arrived after promulgation' signed by him and dated 22/11/2016. However I note that looking at the bundle it does not contain the letter referred to by the Appellant of 2 August 2016. Thus the absence of that bundle made no difference to the case as it did not contain the documents relied on.
17. However reading the decision and in particular paragraphs 7 and 8 the Judge clearly had evidence before him. Therefore I have looked at the correspondence in the file to try and determine what evidence he relied on as it is not set out in the decision. I note that this correspondence includes the letter of 2 August 2016 in which the Appellant puts his case that at the time of application, 16 February 2016, his partner was self employed as a cleaner having previously been a job seeker and that in addition from June 2016 she was a freelance interpreter with D. A. Languages. There is also in addition a letter dated 24 October 2016 referring to the previous letter of 2 August and submitting additional evidence of 3 months of bank statements for the period June 2016-September 2016.

18. The challenge in the grounds is that the Judge did not take into account the evidence submitted with the letter of 2/8/16. I am satisfied this challenge is not made out. The fact that the evidence was not in the Respondents bundle was immaterial as it was in the Tribunals file. I am satisfied not only that the Judge had before him the letter of 2 August and its enclosures and the further letter of 24 October 2016 with statements for the period 18 June 2016 to 17 September 2016 but that he took them into account. I am satisfied that the Judge took them into account because they were the only evidence before the Judge that he could possibly have used to set out the Appellants case in the absence of a Respondents bundle referring as he does to evidence that post dates the date of the Appellants application that was set out in the refusal letter.
19. Moreover on the basis of the evidence contained within the letters of 2/8 and 24/10 the Judge was entitled to come to the conclusion that he did that the evidence to support the Appellants claim was insufficient. The Judge summarises the Appellants case at paragraph 8 to be that the sponsor had been working since February 2016 and specifically that emails showed she 'had been booked as an interpreter on approximately twenty occasions between August and September 2016' and noted that the bank statements did not reflect this: in fact the bank statements for the period June to September 2016 that he had before him shows only one payment from D A Languages from 5 September 2016 of £165 .There is no corresponding invoice even if the Judge had had the Respondents bundle and no evidence of the other 19 occasions that the Appellant asserts that he worked for DA Languages.
20. The Appellant attended court with a receipt book for the Sponsor that he claimed showed the work she had done but there is no evidence that this was ever submitted to the Tribunal indeed there is no reference to that receipt book in any of the letters submitted to the court.
21. It is also argued that the Judge did not take into account the Appellants claim that the Sponsor worked as a cleaner. The Judge makes no reference to this in his findings at paragraphs 7 and 8 although the Appellant relied on it in the applications and the letters of 2/8 and 24/10. However I am satisfied that it could not have made a material difference as the same evidential shortcomings apply.

The Appellant claimed that the Sponsor had worked as a cleaner from February 2016 but there was no evidence of receipts from any customer and the bank statements contain only 3 payments attributable to cleaning on 13/7/16,15/7/16 and 8/8/16. Given the period for which the Appellant claims the Sponsor worked he would have been entitled to conclude that the evidence of that work was woefully inadequate.

22. It is a trite observation that a judge need not address in detail every single argument advanced before him, nor consider in isolation every single piece of evidence. He must weigh all of the evidence before him, and give clear reasons for his conclusions such that the parties, and in particular the losing party, can understand the reasons for his decision. I find that the reasons given were adequate and the Appellant cannot be in any doubt about why the appeal was dismissed: that the evidence produced did not support the claim that the Appellant worked for the periods in issue as a cleaner and interpreter.

## **CONCLUSION**

**23. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**24. The appeal is dismissed.**

Signed

Date 29.9.2017

Deputy Upper Tribunal Judge Birrell