



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01394/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 May 2018

Decision & Reasons Promulgated
On 9 May 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MRS KULDEEP KAUR DHALIWAL
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Yaemir, Darshan Azad Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India. Her date of birth is 7 January 1988.
2. The appellant made an application for a residence card under the Immigration (European Economic Area) Regulations 2006 ("2006 Regulations") on 11 August 2015. The application was refused by the respondent because it was not accepted that the appellant's husband, Mr Kulvir Multani, an EEA national, was exercising treaty rights because of insufficient evidence.

3. The appellant appealed against the decision of the respondent. Her appeal was dismissed by First-tier Tribunal Judge Raymond in a decision promulgated on 21 August 2017, following a hearing at Hatton Cross on 10 August 2017.
4. Permission to appeal against the decision of Judge Raymond was granted to the appellant by First-tier Tribunal Judge Osborne on 13 February 2018.

The Findings of the FtT

5. The judge heard evidence from the appellant and her husband. There was before the judge a quantity of documentary evidence corroborating the sponsor's evidence in respect of his employment. The evidence was that the sponsor was employed by Noon Ltd. He provided for the appeal original payslips from 16 January 2015 to 13 January 2017. He also provided bank statements which show his salary crediting his account. His evidence was that he had worked for the company as a Naan Piece maker since 13 October 2014. There was a letter from the company in support of this. In addition, the appellant relied on P60s relating to her husband's salary. The latest relating to 2017 (presumably April 2016-April 2017) showing a gross annual income of £38,158.32.
6. Both the appellant and her husband's oral evidence was that he was employed by Noon Ltd and had been since 2011. The judge on further scrutiny of the bank statements identified credits made by J Bahad Param "in close proximity chronologically" to the payments from Noon Ltd. The judge set out the oral evidence focusing in the main on what was said by the appellant and the sponsor about those payments. The judge drew their attention to the credits. The EEA sponsor's evidence, in short was that he was allowing someone else to use his bank account deposit funds to buy building products to build a house. His evidence was contradictory about who was using the account, it appeared from his evidence that it was being used by Mr Sethi who was living with him. He did not know whether Mr Sethi was here illegally. The appellant's evidence was equally as incoherent and inconsistent and this issue.
7. The judge concluded at [30] that "it was not possible to assess from coherent and understandable evidence relied on by the sponsor, whom I did not consider to be a credible and honest witness, and this also applies to his wife the appellant, whether he is exercising treaty rights". The judge found at [31] that the Nat West bank statement did not show that it is his bank account into which his salary is paid, given that used extensively by someone else. The evidence about the identity of the person using his account was found by the judge to be incoherent and obscured what his bank account was used for and by whom. This was reinforced, according to the judge, by the evidence about who was living in the family home. The obscurity was further reinforced, according the judge, by the amount of the EEA national's salary of for 2017 which according to the judge would indicate hat he was exercising some managerial or supervisory capacity but this was not consistent with his evidence of that he worked on a conveyor belt.

8. The judge dismissed the claim finding that the EEA sponsor was not exercising treaty rights, summarising his reasons at [36]:

“Because the claimed employment is almost completely obscured by perplexing and incoherent features which leave in considerable doubt what it is that the sponsor is actually doing and is seeking to achieve through his claimed employment”

The Grounds of Appeal

9. The grounds argue that it was unreasonable for the judge to doubt the authenticity of the payslips or the bank statements. There are regular credits into the EEA national’s account which correspond with the payslips. The judge was wrong to place considerable weight on the payments made by the third party and should have focussed on the EEA national’s employment. The sponsor maintains that he is manual worker and receives 7p per naan bread and it is not uncommon to receive a gross income of £38,000 in a tax year.

The Error of Law

10. Mr Bramble conceded that the judge had materially erred for the reasons raised in the grounds. He indicated that the presenting officer at the hearing had taken the view that the evidence that the EEA national was exercising treaty rights was adequate.
11. I conclude that whilst the judge was entitled to find that the appellant and her husband were “not credible and honest,” his reasons for thus concluding must be considered in the context of the narrow issue in this appeal and the corroborative evidence produced on that issue. The sole issue was whether the EEA national was a qualified person. His living arrangements and relationship with a third person whom he allows to use his bank account to deposit funds are/were a side issue in this case. It was his evidence that he was employed and he produced evidence in support of this. The focus of the judge was distracted by the issue which the judge raised of his own volition concerning the credits from J Bahad Param. The evidence on the issue was far from satisfactory, but the distraction, in my view caused the judge to lose focus on the narrow issue in this case. The bank statements were in the appellant’s name. There was no evidence that others were controlling his bank account or had access to his funds. The evidence was that he was allowing a third party to deposit funds into his account. There was no evidence that anyone else was withdrawing funds. In any event, there was cogent and corroborative evidence that the EEA was exercising Treaty rights. The appellant and the EEA national’s evidence was consistent on this point and their evidence was supported. There was no evidence or suggestion made by the respondent that the bank statements were not genuine or that the credits from Noon Ltd related to another individual and not the EEA national. The judge considered immaterial matters and reached conclusions that were not open to him on the evidence. For these reasons, I set aside the decision of Judge Raymond to dismiss the appellant’s appeal.

12. Mr Bramble indicated that the respondent did not take issue in respect of whether the marriage was one of convenience. I remake the decision having found that the EEA national is exercising treaty rights and the marriage is not one of convenience. The appeal is allowed.

13. The appeal is allowed under the 2006 Regulations.

Signed *Joanna McWilliam*

Date 2 May 2018

Upper Tribunal Judge McWilliam