



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

Appeal Number: IA/49686/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 3rd June 2014

Determination

Promulgated

On 6th June 2013

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR AVIEL SHLOMO LEVI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant and his Spouse attended

For the Respondent: Miss Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant Mr Aviel Shlomo Levi date of birth 25th January 1987 is a citizen of Israel.

2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account of all the circumstances I do not consider it necessary to make an anonymity direction.
3. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge S Aziz. The judge dismissed the Appellant's appeal against the decision of the Respondent to refuse the Appellant a residence card as a spouse of an EEA national exercising treaty rights. The judge heard the appeal on 25th February 2014 and the determination was promulgated on 6th March 2014.
4. Leave to appeal was granted by Designated First-tier Tribunal Judge Baird on 25th March 2014. In essence the Grounds of Appeal submit that documentation was sent to the Tribunal specifically payslips to confirm that Mrs Naama Levi was in work and exercising treaty rights. It is alleged that after the appeal was lodged but prior to the hearing documents were sent to the Tribunal confirming that Mrs Levi was in employment. It is alleged that the judge failed to take into account those documents in assessing the appeal.
5. I have checked the Tribunal's computers and it is correct to say that documentation was received by the Tribunal in January 2014. The documents seem to be payslips relating to Mrs Levi and her employment. By reason of the fact that the appeal was first listed at Manchester to be dealt with on the papers the payslips were sent to Manchester. However the appeal had been transferred to be heard at Hatton Cross on the papers.
6. It does not appear that the payslips were put on the file and were not part of the papers considered. Therefore in coming to a decision in this matter First-tier Tribunal Judge Aziz through no fault of his did not have all the documentation submitted in support of the appeal.
7. No criticism is made either of the Home Office or the Appellant. It is merely a matter that through an administrative error the documentation in evidence was not put before the judge. In the circumstances that constitutes a procedural error amounting to an error of law. In the light of that the decision by First-tier Tribunal Judge Aziz cannot stand.
8. The appeal therefore has to be re-determined on the basis of the evidence that is currently before the Tribunal.
9. I can by reason of the fact that this is an in-country appeal relating to EEA rights take account of evidence up to the date of the hearing. I have before me payslips relating to the employment of Mrs Levi. Those payslips commenced on 13th November and continue through into April 2014. There is also a letter from the employers and the accountants for the employers confirming that Mrs Levi is working for the Deli and Dine Kosher Food Shop.

10. Today Mrs Levi has also produced a copy of her P60 to confirm that she continues in employment with the Deli and Dine. In the light of that the only issue before the Tribunal was whether or not Mrs Levi was exercising treaty rights. Mrs Levi is clearly exercising treaty rights as an EEA citizen.
11. Mrs Levi is an Austrian in the United Kingdom exercising treaty rights and working in the United Kingdom. Accordingly under the EEA Regulations 2003 she is entitled to have her husband with her. Her husband Mr Levi falls for consideration under Regulation 7 of the 2003 Regulations and is entitled to a residence card under Regulation 15.
12. For the sake of completeness I would note that the documentation was not submitted to the Secretary of State and accordingly the appeal had to be brought in order for the evidence to substantiate that Mr Levi was entitled to a residence card proved. Accordingly I do not make any fee award in respect of this matter.
13. However having considered all of the matters together it is evident that Mr Levi is entitled to a residence card and I allow the appeal.

Decision

14. I allow the appeal under the EEA Regulations.

Signed

Date

Deputy Upper Tribunal Judge McClure

TO THE RESPONDENT
FEE AWARD

No fee award is made.

Signed

Date

Deputy Upper Tribunal Judge McClure