



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

Appeal Number: EA/09263/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th December 2017**

**Decision & Reasons Promulgated
On 13th December 2017**

Before

**THE HONOURABLE LADY RAE
(SITTING AS AN UPPER TRIBUNAL JUDGE)
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

**JAYDEN PETER STEWART-BRADFORD
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None - no attendance

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of New Zealand born on 4th September 1995. He came to the UK in August 2010, and was granted a residence card as a family member of an EEA national in December 2012 valid until December 2017. He applied for a residence card and confirmation of a right to permanent residence as the step son of Mr Graeme Hills, an Irish citizen. The respondent refused the application on 16th July 2016 on

the basis that the appellant had not provided enough evidence that Mr Hills had resided in the UK in accordance with the EEA Regulations 2006. His appeal on the papers against the decision was dismissed by First-tier Tribunal Judge RE Cooper in a determination promulgated on the 12th December 2016.

2. Permission to appeal was granted by Upper Tribunal Judge Bruce on 3rd August 2017 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider material evidence which had been placed before the Tribunal, and on the consideration of the question of the age of the appellant at the date of application.
3. The matter came before Upper Tribunal Judge Lindsley to determine whether the First-tier Tribunal had erred in law, and for the reasons set out at Annex A she found that the First-tier Tribunal had erred and set aside the decision. The matter was listed to come before us to remake the appeal.
4. The appellant's sponsor wrote to the Upper Tribunal on 22nd November 2017 say that: "Due to personal circumstances I am unable to provide the documentation requested for the full five year period. In this instance we shall initiate alternative residency avenues open to us." The appellant was asked in writing by the Upper Tribunal to confirm in a signed letter if he wished to withdraw his case before the Upper Tribunal. In a letter dated 5th December 2017 received by the Upper Tribunal on 11th December 2017 the appellant confirmed he wished to withdraw his case before the Upper Tribunal.
5. We consent to the withdrawal of the appellant's case before the Upper Tribunal in accordance with Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

DECISION:

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal on 17th October 2017.
3. The appellant withdrew his case on 11th December 2017 and so the decision of the First-tier Tribunal Judge Cooper is reinstated, and the appeal dismissed.

Signed: Fiona Lindsley
2017
Upper Tribunal Judge Lindsley

Date: 13th December

Annex A

DECISION AND REASONS

Introduction

1. The appellant is a citizen of New Zealand born on 4th September 1995. He came to the UK in August 2010, and was granted a residence card as a family member of an EEA national in December 2012 valid until December 2017. He applied for a residence card and confirmation of a right to permanent residence as the step son of Mr Graeme Hills, an Irish citizen. The respondent refused the application on 16th July 2016 on the basis that the appellant had not provided enough evidence that Mr Hills had resided in the UK in accordance with the EEA Regulations 2006. His appeal on the papers against the decision was dismissed by First-tier Tribunal Judge RE Cooper in a determination promulgated on the 12th December 2016.
2. Permission to appeal was granted by Upper Tribunal Judge Bruce on 3rd August 2017 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider material evidence which had been placed before the Tribunal, and on the consideration of the question of the age of the appellant at the date of application.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law

Submissions – Error of Law

4. The appellant argues in his grounds of appeal that he was 20 years old when the application was made so under the age of 21 years and that at that time he only had a small wage as a trainee scaffolder and was reliant on his step-father for his accommodation and food. It is argued that the First-tier Tribunal did not consider evidence of Mr Hills work which included information regarding his contracting through AGM Contracts Ltd since 2010 along with bank statements showing self-sufficiency.
5. The respondent sets out in the Rule 24 notice that there is no questioning turning on the appellant's age. He has to show that he had acquired a permanent right of residence before he was 21 years old, so the five year period is that between the appellant's arrival in the UK and 4th September 2016. The respondent had not seen the documents provided to Judge Bruce so was unable to comment on whether they were with the First-tier Tribunal but observes that it is a risk inherent in a paper appeal that an appellant does not have the opportunity to clarify matters or explain documents.

Conclusions – Error of Law

6. It is clear from paragraph 8(iv) of the decision that the First-tier Tribunal did not receive all of the documents that the appellant provided. The only documents considered were the small bundle received at Manchester Piccadilly on 24th August 2016, and not the further documents submitted on 1st September 2016. It is clear that further documents were provided with a letter of 29th August 2016, the file copy of which is stamped with a Manchester Piccadilly stamp dated 1st September 2016 but no longer has any documentation attached to it. It is also clear that these documents related to Mr Hills and his work, and so were material to the key issue in this appeal namely whether Mr Hills had been residing in the UK in accordance with the EEA Regulations for five years.
7. I find that the documents that were attached to the letter of 29th August 2016 must have become detached and were lost by the First-tier Tribunal and so were not before Judge Cooper when he determined the case. I find therefore that inadvertently not all relevant documentation going to the key issue of whether Mr Hills was a qualified person under the EEA Regulations for a period of five years was considered by the First-tier Tribunal, and that this amounts to an error of law as it was procedurally unfair to the appellant.
8. The appellant is a family member of Mr Hill's under Regulation 7(1) of the Immigration (EEA) Regulations 2016 as he is the direct descendent of Mr Hill's spouse, until he is 21 years old, thus until 4th September 2016. (After this time he may remain a family member if he is dependent on Mr Hill's or his mother.) To qualify for a right of permanent residence he must show that Mr Hill has exercised Treaty rights for a period of five years whilst he, the appellant, has been present in the UK as a family member, see Regulation 15 of the Immigration (EEA) Regulations 2016.
9. I adjourned the re-making hearing so that Mr Hills could attending a future hearing and provide a comprehensive statement on his work from 2010 to September 2016, and also provide a paginated bundle of documents supporting his implicit contention to have been a frontier or posted worker in Germany and a UK work seeker during this period of time. The bundle should also contain, in a separate paginated section, a chronology of what the appellant has been doing in the UK since his arrival and any documents showing the appellant's own residence in the UK during this period. The documents provided with the appeal to the Upper Tribunal were confusingly laid out, the bundle was unpaginated and they had not reached the Presenting Officer's file.

Decision:

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.

3. I adjourn the re-making of the appeal.

DIRECTIONS:

1. The appeal is relisted for a remaking hearing on **Tuesday 12th December 2017** at 10am. The appellant and Mr Hills should both attend this hearing.
2. The appellant must file a bundle of all documents on which he wishes to rely regarding his own residence in the UK and Mr Hills work from 2010 onwards with the Upper Tribunal at Field House, 15 Breems Buildings, London EC4A 1DZ and serve a copy of that bundle on the Secretary of State at the Presenting Officers Unit, 5th Floor Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX by **Monday 27th November 2017**.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 17th October 2017