Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/09535/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 October 2017	**On 23 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MRS ANITA BROWN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Okunowo, Counsel instructed by Toltops Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 20 December 1975. She appeals the decision of Judge Abebrese (the Immigration Judge) who dismissed her paper appeal against the refusal to grant her a permanent residence card in the UK to join her husband, Mr Jacob Akinwale Johnson, a German national.

2. It appears that Mr Johnson arrived in the UK as long ago as 10 January 2004 and that the appellant obtained a permit to join him on 9 March 2010. She was initially given a residence card on 27 January 2011 but later applied for a permanent residence card in the UK. Judge Abebrese when he considered the case noted that this was a paper appeal and that the appellant had not put in any witness statement from either herself or her sponsor husband. He also noted that the evidence that had been supplied in support of the application was limited. In particular, the only key part of the evidence that he had in front of him was a P60 for the period 2013 to 2014. He noted that a witness statement had not been provided in support of the evidence and he said that the evidence before him did not provide the respondent with sufficient information to decide whether the sponsor was in fact been carrying on economic activities within the UK for the required five- year period as was required by Regulation 15 of the EEA Regulations 2006 (the EEA Regulations). The 2014/15 document was clearly inadequate for this purpose as it did not cover the requisite continuous five-year period required by Regulation 15(1)(b) of the EEA Regulations and, furthermore, he noted that this evidence had not even been mentioned in the refusal, it had not been tested in cross-examination and he therefore decided that the evidence was not sufficient to discharge the burden of proving that the Regulations were met to the civil standard of proof, which applies to the application, at the date of decision.

3. First-tier Tribunal Judge Holmes considered the application for permission to appeal and noted that in his view it was at least arguable that the Immigration Judge failed to give any good reason for rejecting the evidence. It was incumbent upon the Immigration Judge to consider all the evidence placed before him in support of the appeal. Judge Holmes thought it was at least arguable that sufficient evidence had been placed before him to satisfy the requirement of the EEA Regulations to grant the required permanent residence card.

4. Before me it has been argued by the appellant, who has produced a helpful bundle of documents in support of the appeal, that the P60s were more than sufficient to satisfy the requirements of Regulation 15(1) (b) of the EEA Regulations. They are official documents recognised by the Inland Revenue, which are frequently relied on in courts and tribunals and the Immigration Judge did have at least one document confirming the sponsor’s employment with a company called NSL, which I am told is a security company. He took me to the actual P60s themselves which start at page 18 of his bundle and they do indeed show a continuous period of employment without a break. His case therefore was, that there were insufficient grounds for dismissing these documents. They could be relied upon at face value given that the ordinary civil standard of proof applied to evidence in this case.

5. However ,Ms Willocks-Briscoe argued that the judge was entitled to consider the evidence and decide what weight to attach to it. At paragraph 11 he balanced all the relevant factors but concluded that the evidence was insufficiently robust. It was open to the appellant and the sponsor to provide proper witness statements. In fairness to Ms Willocks-Briscoe, she accepted it was perfectly within the rights of the appellant to decide to have a paper appeal and therefore the reference to her being cross-examined was something of an irrelevance. No original documents were supplied and it was therefore difficult for the respondent to properly consider the application and decide whether to dispute the validity or authenticity of the documentation.

6. Mr Okunowo responded to say that the documents clearly demonstrated the period of employment in question. It was up to the Home Office to dispute the P60 that they had been supplied with and if they needed more information they should have requested it. The Immigration Judge was obliged to consider all documents supplied in support of the appeal.

7. Whilst I have some sympathy with the Immigration Judge, who was faced with a paper appeal and very little documentation in support, there was sufficient documentation to properly determine this appeal. Unfortunately, it seems that the respondent was not supplied with all the documents she should have been supplied with. However, as Mr Okunowo has rightly submitted, the ordinary civil standard of proof applies to this appeal and the test that had to be satisfied was not a particularly high or difficult one. The issue was: whether the EEA national had resided in the UK in accordance with the EEA Regulations for a continuous period of five years? It seems that the appellant was in continuous employment throughout the five year period as was required by those Regulations.

8. The appellant had a right of appeal under Regulation 26 of the EEA Regulations. The Immigration Judge was required to consider all material evidence provided in support of the appeal at the date of the hearing, whether or not it was supplied in support of the application. It was open to the respondent to challenge the P60 for the year that had been produced and the respondent did not suggest that that was, effectively, a fabrication. But, if she doubted its authenticity, the respondent should have said so.

9. I have concluded there was a material error of law in the decision of the First-tier Tribunal. I find that the evidence supplied discharged the ordinary civil standard of proof in absence of any evidence to the contrary. I substitute my decision for that of the First-tier Tribunal, which is to allow the appeal of the appellant against the refusal of the respondent to grant a permanent residence card and I so direct.

Notice of Decision

The appeal is allowed under the EEA Regulations

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award but have decided to make no fee award because the appellant did not supply all the documents he should supplied at the outset.

Signed Date

Deputy Upper Tribunal Judge Hanbury