Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00946/2017

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 23 October 2018	**On: 5 November 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AZLAN QARIB

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Anyene, instructed by Chancery Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 25 June 1994. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with a residence card under the Immigration (European Economic Area) Regulations 2006 as the family member (spouse) of an EEA national. First-tier Tribunal Judge Thomas dismissed his appeal.

2. The appellant entered the UK on 1 March 2011 with leave to enter as a student until 30 July 2012. His leave was subsequently extended until 13

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February 2013. On 23 May 2016 he applied for a residence card under the Immigration (European Economic Area) Regulations 2006 as the family member of an EEA national, namely his spouse, a Romanian national. It appears from the application form (section D.5.16) that at the time of the application there had only been a religious, Islamic marriage, but the appellant subsequently underwent a civil marriage on 11 August 2016 (page E1-2 of the respondent's appeal bundle) and provided the respondent with his marriage certificate.

3. The respondent refused the application on 2 December 2016. The respondent noted that the only evidence of the EEA sponsor's employment was a copy of a letter from her employer Mute Solutions Limited which did not provide any business or website address and could not therefore be verified. The respondent attempted to call the telephone number given in the letter but the call went straight to voicemail and a search of Google failed to identify a website for the company. The respondent noted that a company matching that of the sponsor's employer appeared on the Companies House website but that was not considered sufficient to confirm that the sponsor was exercising treaty rights in the UK. In the absence of any other supporting evidence of the sponsor's employment such as P60s, wage slips or employer's letter on letter head, the respondent concluded that there was insufficient evidence to demonstrate that she was economically active in the UK as an employed person. The respondent therefore refused to issue the appellant with a residence card.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Thomas on 23 October 2017. The appellant appeared at the hearing and gave oral evidence but the sponsor was not present. It was said that she had a back problem and therefore could not attend the hearing. The appellant said that his wife had worked for Mute Solutions Ltd from November 2016 to March 2017. She was currently in different employment which commenced around 26 September 2017, but he had no evidence of that. He said that she was working at night in a DPD warehouse.

5. Judge Thomas considered that the evidence of the sponsor's claimed employment with Mute Solutions was insufficient to prove her employment and that there was no evidence of the current claimed employment with DPD. There was no evidence of how the sponsor had been exercising treaty rights from March 2017 onwards. The judge found that the appellant had therefore failed to discharge the burden of proving that he was the family member of an EEA national who was a qualified person exercising treaty rights in the UK. She accordingly dismissed the appeal.

6. The appellant sought permission to appeal that decision to the Upper Tribunal on the basis that the appellant's application had been supported by all relevant documentation including an employer's letter and payslips and that the decision was unreasonable and unfair. The grounds asserted that the appellant's representatives had forwarded documents regarding the sponsor's current job which commenced on 30 October 2017. The documents had been

sent to the Tribunal on 5 November 2017 and were received by the Tribunal on 8 November 2017, before the appeal was determined by the judge. The judge therefore erred by not considering the documents. The grounds asserted further that the judge had ignored Article 8.

7. Permission was initially refused in the First-tier Tribunal, but was subsequently granted by the Upper Tribunal on a renewed application, on 4 September 2018. On the basis that a bundle of documents had been received by the First-tier Tribunal on 8 November 2017 which purported to show that the sponsor was employed from 30 October 2017, albeit that it was not clear whether or not it had been passed to the judge before the decision was promulgated, there was arguably a procedural irregularity in failing to take that evidence into account.

8. At the hearing before me, Mr Anyene submitted that the judge's decision at [3] acknowledged that the EEA national sponsor had worked until March 2017 and from 26 September 2017 and that the judge had therefore erred at [8] by saying that there was no evidence of employment from March 2017. The documents sent to the Tribunal before the determination of the appeal included a contract of employment which commenced seven days after the hearing. There was therefore evidence before the judge that the sponsor was working.

9. Mr Avery submitted that the appellant's submissions mischaracterised the decision of the judge as she had merely summarised the evidence at [3] and concluded that it was insufficient to demonstrate that the EEA national was exercising treaty rights. The further evidence was also insufficient to show the exercise of treaty rights. There was no material error of law.

DECISION

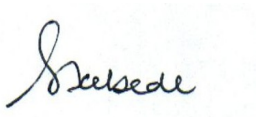
10. Contrary to the submissions made by Mr Anyene the judge made no positive findings at [3] in relation to the sponsor's employment, but was merely summarising the appellant's evidence. The judge's findings were made at [8] and were plainly that the evidence was not sufficient to demonstrate that the sponsor had been, or currently was working. The appellant's grounds refer to relevant documentation including an employer's letter and payslips having been produced with the application, but that is clearly not the case as the only evidence of employment produced was a copy of a letter from Mute Solutions Limited. The judge noted at [8] that the appellant ought to have been able to evidence that employment by documents such as a contract, payslips, bank statements and tax documents, but he had clearly not done so. On that basis, and for the reasons properly given, the judge was fully entitled to conclude that there was insufficient evidence to show that the EEA national sponsor had been working for such a company and, in the complete absence of any supporting documentary evidence, that she was working for DPD.

11. Permission was granted, in any event, on the separate issue of the further documentary evidence produced after the hearing but before the

determination of the appeal. Whether or not the judge was aware of that evidence, it was within the possession of the Tribunal and therefore ought to have been taken into consideration. There was plainly an error on the part of the Tribunal in failing to address that evidence. However I am entirely in agreement with Mr Avery that that error is immaterial, as it takes the case no further. The only evidence in the bundle of documents was a copy of a contract of employment for the sponsor's claimed employment with Phone Fixed Ltd, which was to commence on 30 October 2017, a week after the appeal was heard. The original document was not produced and neither was the copy accompanied by any payslips or other such evidence to show that the sponsor had actually commenced working there. The evidence was therefore wholly deficient in seeking to demonstrate that the sponsor was exercising treaty rights and suffered from the same defects as those referred to by the judge at [8] in regard to the other evidence. Accordingly even if the judge had considered that evidence it could not possibly have led to any other outcome.

12. There was, accordingly no material error on the part of the judge. There was nothing in the evidence produced by the appellant either before or subsequent to the appeal hearing to adequately demonstrate that the EEA national was a qualified person exercising treaty rights in the UK. The judge's decision, that the appellant was not entitled to a residence card, was fully and properly open to the judge on the evidence available.

13. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed:  Dated: 24 October 2018

Upper Tribunal Judge Kebede