



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/04465/2016  
EA/05057/2016  
EA/05058/2016

**THE IMMIGRATION ACTS**

Heard at Civil Justice Centre, Manchester  
On 5<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 5<sup>th</sup> June 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

Y K  
A N  
A H

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Markus instructed by First Law Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants were granted permission to appeal the decision of First-tier Tribunal judge A R Hudson dismissing their appeal against a decision of the respondent dated 12<sup>th</sup> April 2016, refusing to issue them with residence certificates as family members (wife and children) of a Portuguese citizen who was not, according to the respondent, exercising Treaty Rights. The grounds relied upon and upon which permission was granted were that the First-tier Tribunal Judge had made perverse findings of fact, had failed to have regard to all the evidence before him and applied the wrong burden of proof.

2. First-tier Tribunal Judge Hudson did not accept (paragraph 10) that the Sponsoring husband/father – Mr L A – was employed as claimed at the date of the decision. In paragraph 11 of the decision the judge said

Since the decision Mr L A has supplied payslips relating to Presto Medicolegal Ltd. He appears to work 104 hours per month in an office environment, irrespective of the number of days in a month, or where the weekends fall. I do not accept those payslips are genuine.

The judge gave no reasons for refusing to accept the payslips as genuine.

3. The appeal was dealt with on the papers by the First-tier Tribunal judge. From the papers, it is apparent that at the date of the decision, the respondent had not accepted that the employment documents relied upon by the appellants were evidence that Mr L A was employed as claimed. His application for a residence certificate had been refused on the same date and, although he also had a right of appeal, he had not (it seems) exercised his right of appeal. Mr L A made a further application with the documents from Presto Medicolegal Ltd – the same as those in the bundle before the First-tier Tribunal Judge. The respondent issued Mr L A with a Residence Certificate based on those documents dated 26<sup>th</sup> July 2016.
4. The respondent did not make any written submissions. It appears from the papers that the decision by the respondent at the date of decision was correct – the respondent had not considered the documents then relied upon as genuine, had refused to issue Mr L A with a Residence Certificate and Mr L A had not appealed that decision. At the date of the appellants' decision, they were not family members of an EEA citizen exercising Treaty Rights. That decision was disputed by the appellants but little turns on it because by the time of the hearing, Mr L A had other employment.
5. However, the judge ought to have considered the position as at the date of hearing. He purported to do so by stating that he did not accept that the documents relied upon from Presto Medicolegal Ltd were not genuine. He failed to give any reasons at all for that finding which is particularly surprising given that those very documents had been accepted by the respondent as genuine with the effect that she had issued Mr L A with a Residence Certificate.
6. The failure of the First-tier Tribunal Judge to give any reasons for his finding that the documents could not be relied upon and the failure to take account of evidence that was before him is a material error of law. I set aside the decision to be remade.

### **Remaking of the decision**

7. Mr L A has, since the hearing before the First-tier Tribunal, changed his employment. The appellants submitted a bundle of documents which included P60s, a letter from HMRC, payslips up to 30 April 2018 and bank statements. The bundle was submitted at the hearing before me and I put the case back to enable Mr Duffy time to consider the documents.

8. After consideration of the documents Mr Duffy confirmed that he was satisfied that Mr L A was exercising Treaty Rights and that the appeal should thus be allowed.
9. I also considered the documents. I note and accept that although Mr L A's income is low and he is receiving public benefits, he is exercising Treaty Rights as a worker.
10. I allow the appeals.

### **Conclusion**

The First-tier Tribunal Judge made an error of law such that I set aside the decision to be remade.

I remake the decision and allow the appeals by the appellants against the decision of the respondent to refuse them residence certificates.



Date 5<sup>th</sup> June 2018

Upper Tribunal Judge Coker