



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

Appeal Numbers: EA/08545/2017

THE IMMIGRATION ACTS

Heard at RCJ Belfast

On 29 November 2018

Decision & Reasons

Promulgated

On 12 December 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MICHAL KOTLAR
(NO ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondents: Mr Hollywood, Andrew Russell Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Grimes, promulgated on 5 June 2018, allowing Mr Kotlar's appeal against decision made on 20 October 2017 to remove him from the United Kingdom as a person whose right to reside under the Immigration (European Economic Area) Regulations 2016 ("the Regulations") had ceased. A decision made on the same date that removal is justified on grounds of an abuse of rights pursuant to reg. 26(3) of the Regulations.

2. The respondent's case is that, although he was no longer working, he had retained the status of worker as he had had to cease work and is still temporarily unable to work owing to illness, and so is and at all material times was a qualified person within reg. 6 (2). On that basis he had a right to reside.
3. That had not been accepted by the appellant but, on appeal the judge noted [15] that it was only at that stage that evidence had been provided in a bundle. She also noted [17] statements of Fitness for Work for social security or sick pay. Which she found showed that the respondent is currently temporarily unable to work due to an illness. It is also of note that the bundle enclosed a P45 from the last employment and documents from HM Revenue and Customs detailing his employment and the receipt of Employment Support Allowance during Tax year 2014/15.
4. In the light of the evidence as a whole, the judge concluded that the respondent had retained the status of worker and was thus entitled to reside as a qualified person.
5. The respondent sought permission to appeal on the grounds that there was no evidence of the appellant's employment [4], and that the first document relating to sick pay was not issued until 23 November 2017, casting doubt on whether his temporary incapacity had (as he submitted must be the case) immediately followed cessation of work.
6. Mr Duffy submitted that, in essence, this case was about a lack of evidence. I raised with him the evidence contained within the bundle as set out above. In light of that and the acceptance that Employment Support Allowance is payable only to those not capable of work owing to ill-health, he conceded that there was no merit in his grounds.
7. I make no criticism of Mr Duffy who was not responsible for drafting the grounds and whose candour before the Tribunal was exemplary. I can only assume that, as he indicated, the author did not have sight of the bundle on the Secretary of State's file. That, however, does not excuse the submission of grounds which were at best misleading.
8. In the circumstances, I did not need to hear from Mr Hollywood, and I dismissed the appeal. The judge clearly had before her adequate evidence from an independent and reliable source - HM Revenue and Customs - that the respondent had been working and had been contemporaneously adjudged unfit to continue working as demonstrated by the grant of Employment Support Allowance.
9. For these reasons I find that the decision of the First-tier Tribunal did not involve the making of an error of law capable of affecting the outcome and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and uphold it.
2. The respondent is reminded that any application for costs must be made pursuant to Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008 within one month of the issue of this notice.

Signed

Date 29 November 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul