



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

Appeal Number: EA/08947/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 3 October 2018**

**Decision & Reasons
Promulgated
On 16 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**MR BI HERMANN TIE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Y Din, counsel instructed by ADA Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** This is an appeal against the decision of First-tier Tribunal Judge M A Khan in which he dismissed the appeal of the Appellant, a citizen of Ivory Coast, against the Secretary of State's decision to refuse his application for permanent residence as the family member of a European Economic Area national exercising Treaty rights in the United Kingdom.
- 2.** The application under appeal was refused on 20 October 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. The

appeal came before Judge M A Khan on papers on 13 March 2018 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Ford on 9 August 2018 in the following terms

It is arguable that the Tribunal may have erred in overlooking relevant evidence including evidence of employment of the EEA national sponsor with De Vere from 01/04/2008 to 31/10/2010 at page 88-94 of the appeal bundle and the dates of absence of the EEA national sponsor and child from the UK for medical treatment in France (stated in Ground 5 of the appeal grounds as 30 March 2015 to 30 December 2015).

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Sierra Leone born on 2 November 1977. The Appellant arrived in the United Kingdom on 15 February 2004. He is married Leonie Ble, a French national on 28 August 2009. On 2 September 2010 the Appellant was issued with a residence card as the family member of a European national exercising Treaty rights. On 18 January 2017 he made an application for permanent residence.
4. The Secretary of State refused the Appellant's application not being satisfied that evidence had been submitted to show that the Appellant's wife had been exercising treaty rights for a continuous period of 5 years. The Secretary of State was satisfied that evidence was submitted showing employment for 4 years and 2 months.
5. The Judge dismissed his appeal finding the Appellant had not provided further evidence to establish employment beyond the period of 4 years and 2 months or to show that the Sponsor had travelled abroad with their child for urgent medical treatment as submitted in the grounds of appeal.

Submissions

6. At the hearing before me Mr Din appeared for the Appellant and Mr Tarlow for the Respondent. Mr Din confirmed that he and Mr Tarlow had spoken, and that error of law was conceded. There were various errors in the decision of the First-tier Tribunal but in particular the Judge had overlooked evidence showing employment in excess of 5 years. Mr Tarlow confirmed that the appeal was conceded and suggested that the matter be remitted to the First-tier Tribunal to be heard again. I asked whether the Secretary of State now accepted that evidence had been provided showing 5 years continuous employment and Mr Tarlow accepted that it had. In the circumstances I asked Mr Tarlow whether there was any reason why I should not remake the decision allowing the Appellant's appeal and he confirmed that there was not. I therefore gave an extempore decision

setting aside the decision of the First-tier Tribunal and remaking the decision by allowing the Appellant's appeal.

Decision

- 7.** This was an application for permanent residence by the spouse of a French national exercising Treaty rights in the United Kingdom. The Appellant already held a residence card as a result of this relationship. The refusal letter accepted that evidence had been submitted showing that the Appellant's spouse had exercised Treaty rights for a continuous period of 4 years and 2 months being 29 November 2010 to 23 January 2015. The grounds of appeal to the First-tier Tribunal submitted that during the period 30 March 2015 to 30 December 2015 his spouse had travelled abroad with her child for urgent medical treatment and that this period should have been taken into account in accordance with regulation 3(1) (2) of the EEA regulations.
- 8.** The appeal was dealt with as a paper case. The Appellant submitted a bundle of documents under cover of a letter dated 10 January 2018. The covering letter confirmed that a further bundle would be submitted "consisting of French Medical Reports and translations".
- 9.** When the appeal was dealt with the First-tier Tribunal Judge refers to the Appellant as "she" throughout and describes the Appellant's spouse a "a Swiss national". The Appellant is male, and his spouse is French. These errors of fact certainly indicate that the papers were not given thorough consideration. A further error, and in my judgement a material error was that the decision states (at paragraph 17) that the Appellant does not mention the period of his spouse's absence from the United Kingdom for medical treatment when the grounds of appeal (at paragraph 5) gave the period as 30 March 2015 to 30 December 2015. I set aside the decision of the First-tier Tribunal for this reason.
- 10.** Were it not for Mr Tarlow's concession a difficulty would arise at this point. The grounds of appeal to the Upper Tribunal refer (at paragraphs 1 and 5) to the documents before the First-tier Tribunal including the Appellant's witness statement, a skeleton argument, corroborative medical records from a hospital in Toulouse and wage slips from an earlier employment. I can find none of these documents on the Court file prior to the decision of the First-tier Tribunal. The only document that I have concerning medical treatment is contained (but not indexed) in the bundle before the First-tier Tribunal. This is untranslated, but it is dated 17 June 2015 and confirms the hospitalisation of Henri Maximilien Seninhouon (aged 17) from 9 June to 17 June 2015 for correction of lumbar scoliosis. Following the operation, the letter recommends the wearing of a corset for about 2 months and radiological follow up after 3 months. On the assumption that Henri is the child of the Appellant's sponsor this is at least some corroboration of the claim that she was absent during the relevant period. The failure to consider this document is, in my judgement, a further error.

- 11.** In any event documents were submitted to the Upper Tribunal confirming the Appellant's spouse's employment with De Vere Hotels from 1 April 2008 to 31 October 2010 which, added to the accepted 4 years and 2 months, more than make up a 5-year period of continuous employment showing that the Appellant met the requirements of the EEA regulations. These documents are referred to in the grounds of appeal and indeed the grant of permission to appeal as being at pages 88-94 of the appeal bundle before the First-tier Tribunal. The bundle before me ends at page 63 with the untranslated medical letter referred to above. If these documents were indeed before the First-tier Tribunal that is a further material error of law in that they were not considered.
- 12.** I am satisfied given Mr Tarlow's concession and the evidence now before me that there are material errors of law in the decision of the First-tier Tribunal. I am further satisfied on the documents now before me that the Appellant's spouse was continuously employed, and therefore exercising Treaty Rights, from 1 April 2008 to 23 January 2015 and that on this basis the Appellant met the requirements of the EEA regulations.

Summary of Decision

- 13.** On Mr Tarlow accepting that there was evidence before the First-tier Tribunal that the Appellant's spouse had been exercising Treaty Rights for a continuous period of five years prior to the relevant date I set aside the decision of the First-tier Tribunal and remake the decision by allowing the appeal.

Signed

Date: 10 October 2018



J F W Phillips
Deputy Judge of the Upper Tribunal