



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09242/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 24th July 2018

Decision & Reasons Promulgated
On 15 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR SAHEED ADEBOLA ADEBOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 23rd February 1985. On 5th July 2017 the Appellant had applied for a residence card as a family member who had a retained right of residence following the end of his marriage to [DA]. The Appellant's application was refused on 9th October 2017 on the basis that he had not provided adequate evidence that he had a retained right of residence in the UK following the end of his marriage to his EEA partner. It was noted that Regulation 21(5) of the 2006 EEA Regulations stated that when an application was made by an applicant on the

basis that they are or were the family member of an EEA national then a valid national identity card or passport must be provided.

2. The Appellant appealed the decision and the appeal came before Judge of the First-tier Tribunal Wyman sitting at Harmondsworth on 22nd January 2018. Judge Wyman addressed the appeal on the papers. He noted that the Appellant explained that he had acquired permanent residence status from his ex-spouse's exercise of her treaty rights for a period of five years in the United Kingdom. His ex-wife had been a student from September 2009 to June 2013 following which she worked for a period of three years in the United Kingdom. The Appellant explained that he had provided suitable evidence of his wife's studies and employment together with the comprehensive sickness insurance that she had obtained. He had noted that the burden of proof was on the Appellant on the balance of probabilities. He noted that the Appellant had provided a significant amount of documentation confirming that both his ex-wife and he had been exercising treaty rights in the UK and had provided a copy of his ex-wife's Belgian identity card. In the circumstances he allowed the appeal.
3. On 14th February 2018 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that in allowing the appeal the judge had found that the EEA Sponsor was exercising treaty rights as a student. However it was submitted that the judge had not given adequate reasons to establish that the evidence before the Tribunal was sufficient to establish that the EEA national satisfied the requirements of Regulation 4(d). Given that this was a paper appeal it was submitted that it was incumbent upon the judge to clearly identify the evidence which supported the findings made and give reasons as to why the evidence was accepted. The grounds contended there was nothing in paragraph 19 to suggest that the judge had turned his mind to the requirement of Regulation 4(d) when assessing whether or not the EEA Sponsor satisfied all other requirements of being a student and there are no reasons given to enable a reader to establish what evidence and factors the judge took into account beyond the fact that the Sponsor was a student.
4. On 30th May 2018 the First-tier Tribunal Judge Birrell granted permission to appeal. Judge Birrell considered that it was arguable that the judge had failed to identify which of the documents he found in the Respondent's bundle met the requirements of "comprehensive sickness insurance" as required by a student as there is a document in the Respondent's bundle that is stated to be a "basic plan" and a letter from "Health Online" that may show the start date of a comprehensive policy in 2010 but arguably did not clarify whether the policy was renewed.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note this is an appeal by the Secretary of State. However for the purpose of continuity throughout the appeal process Mr Adebola is referred to herein as the Appellant and the Secretary of State as the Respondent. The respondent appears by her Home Office Presenting Officer Mr Diwnycz. The Appellant appears in person.

Submissions/Discussion

6. The Appellant appeared in person and I appreciated that this was the first time he had appeared in the appeal process, his appeal having previously been dealt with on the papers. I explained the process to him and he acknowledged understanding, and I indicated to him that the appeal was being made by the Secretary of State and that I would listen without interruption to any submissions he made.
7. He asked me to note a document which I have given due consideration to, this being a master certificate of insurance that was provided through the underwriters International Health Management Services of Lagos, Nigeria, covering the period 1st December 2010 to 31st November 2013. This certificate of insurance was for the benefit of the Appellant's spouse. The Appellant also seeks to rely on the production of P60s and indicates that his belief was he only needed to provide these as his former spouse is no longer at university.
8. Mr Diwnycz corrects the Appellant by pointing out that it is necessary to provide details of comprehensive health insurance as required by statute. He submits that the P60 is not sufficient documentation and that the Appellant had failed to provide sufficient documents for the judge to make the decision that he did, and therefore there is a material error of law.
9. In a brief response the Appellant states that he is working and that his former spouse was aware of the Rules, provided comprehensive insurance and that the policy was in force. He submits that the judge was correct and there is no material error in law. He advised he has no contact with his former spouse now whatsoever.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of

significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Statutory Provision

12. Regulation 4(d) of the EEA 2006 Regulations states:

“(d) ‘student’ means a person who –

- (i) *is enrolled at a private or public establishment, included on the Department for Education and Skills' Register of Education and Training Providers [9] or financed from public funds, for the principal purpose of following a course of study, including vocational training;*
- (ii) *has comprehensive sickness insurance cover in the United Kingdom; and*
- (iii) *assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.”*

Findings on Error of Law

13. This appeal turns on whether or not the judge has turned his mind to the requirements of Regulation 4(d) when assessing whether or not the EEA Sponsor satisfied all the requirements of being a student. I am mindful that the certificate of insurance has been produced. I have also given due consideration to the history of this matter and the current position of the Appellant and his former spouse. In Judge Wyman’s finding and conclusions at paragraphs 18 to 23 he has given full and detailed consideration to the documentation that has been provided. That includes the insurance certificate. He has noted the evidence regarding the Appellant’s former spouse’s period of study as a student and that she had successfully completed a BSc in computing and he had noted evidence provided of the Appellant’s own employment in the form of P60s. The basis of course upon which the original notice of refusal was made was based on a failure to provide a valid passport or identity card for his ex-wife. In addition at paragraph 21 Judge Wyman noted that the copy of [DA]’s Belgian national identity card had been provided and that it was valid until 27th July 2017 and he noted that there had been a significant amount of documentation confirming that both [DA] and the Appellant had been exercising treaty rights over the previous five years.
14. When all these documents are looked at in the round I am satisfied that the judge has fully exercised his mind to the issues that were before him and has assessed whether or not the EEA Sponsor satisfied all the requirements of being a student. In such circumstances the submission made by Mr Diwnycz on behalf of the Secretary of State and the Grounds of Appeal amount to little more than a disagreement. This is a judge who has carried out a very full analysis and made findings he was entitled to. In such circumstances the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris