



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

Appeal Number: EA/09591/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Heard on 24 April 2018
Prepared on 24 April 2018**

On 26 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR ZAFAR IQBAL JANJUA
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra of Counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING A MATERIAL ERROR OF LAW

The Appeal

1. The Appellant is a citizen of Pakistan born on 5 November 1969. He appeals against a decision of Judge of the First-tier Tribunal Walters sitting at Hatton Cross on 6 December 2017 in which the Judge dismissed the Appellant's appeal against two decisions of the Respondent dated

22nd and 25 July 2016 respectively. Those decisions were: (i) to refuse to issue the Appellant with a permanent residence card under Regulation 15 of the EEA Regulations 2006 and (ii) to revoke a residence card (which had been issued on the 23 September 2014).

2. The Respondent was not satisfied that the Appellant's EEA spouse had resided in the United Kingdom with the Appellant for a continuous period of 5 years and could not demonstrate that she was exercising treaty rights by working. The Respondent considered that the Appellant's profits from his business were insufficient for him to employ his spouse and there was insufficient evidence to prove that the spouse was genuinely self-employed as a cleaner.

The Proceedings at First Instance

3. In a very brief decision the Judge dismissed the appeal because he found that the Appellant's representatives had failed to provide a bundle of evidence. That meant that there was no evidential basis for challenging the assertions, analyses and conclusions in the Respondent's refusal letter.
4. The Appellant appealed against that decision arguing that a directions order made by the Tribunal on 27 November 2017 directed the Appellant to send any written evidence and submissions to the Tribunal and the Respondent by 15 December 2017 with documentation from the Respondent to be sent by 25 December 2017. The Judge had considered the matter on the papers on 6 December 2017 (as appears from the first page of the determination) before that deadline had expired. The Appellant had not had the opportunity to comply with the direction.
5. I pause to note here that the original direction sent out by the Tribunal on form IA 37 on 13 July 2017 had indicated that the appeal would be heard on Friday 15 December 2017. The Appellant's solicitors had then written to the Tribunal on 17 November 2017 indicating that they no longer wished the matter to proceed to an oral hearing on 15 December 2017 but that their client would like the appeal to be decided on the papers as he was unable to attend the court in person. That gave rise to the further order of 27 November 2017 which set a new timetable for the filing of evidence.
6. The Appellant's solicitors sent a bundle of evidence to the Tribunal on 14 December 2017 arguing that the direction was that they should send their evidence by 15 December 2017 not that it should be received by the Tribunal by that date. The bundle which they sent amounted to some 342 pages although a substantial portion of that documentation consisted of invoices rendered by the EEA national for her cleaning services and could more conveniently have been put in schedule form. There were also a number of wage slips for the EEA sponsor.

7. The Tribunal had heard the Appellant's appeal before the time limit for filing evidence had expired and he had been unable to file any documentation in response to the Respondent's criticisms leading to the Judge's conclusion that there was no answer to them.
8. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on 6 February 2018. He found it arguable that the Judge had fallen into error when deciding the case without reference to the bundle sent by the Appellant to the Tribunal. There was no rule 24 response from the Respondent. Subsequently the Appellant applied for his onward appeal to the Upper Tribunal to also be decided on the papers but this request was refused by the Principal Resident Judge.

The Hearing Before Me

9. In consequence of the grant of permission the matter came before me to determine whether there was a material error of law in the decision of the First-tier Tribunal. It was acknowledged by the Presenting Officer that there had been no proper hearing of the appeal in this case because the matter had been determined by the Judge before the deadline for filing evidence had expired.
10. There was one further point of significance. Although the Judge had considered the matter on 6 December 2017 the determination itself was not promulgated until 9 January 2018 by which time the Tribunal did have the Appellant's very large bundle. Whilst it may have been correct for the determination to state at [6] that the Tribunal did not receive a bundle from the Appellant by 15 December 2017 given that the case was apparently heard on 6 December 2017 that comment indicated that the Judge had considered the case after 6 December. A further check to see if evidence had been received could possibly have been carried out

Findings

11. I indicated to the parties that I considered there had been no proper hearing of the Appellant's appeal at first instance because of the mix up over the dates for filing evidence. I further indicated that in those circumstances I was going to remit the appeal back to the First-tier Tribunal to be decided again by any Judge other than Judge Walters.
12. I make four specific directions:
 - (i) Before the next hearing the Appellant's representatives must go through the unwieldy Appellant's bundle and reduce it to a more manageable number of documents for example by scheduling the invoices.
 - (ii) The appeal will be heard as an oral appeal. The Appellant should consider carefully whether he wishes to attend to give evidence and be cross-examined on the next occasion (unless there is some

good medical reason why he cannot attend). The Appellant paid for an oral hearing and he lives in London E6 which is not an undue distance from Hatton Cross. The appeal raises issues as to credibility which should be properly explored.

- (iii) The Appellant must inform the Tribunal at least 14 days before the next hearing whether he or any witness requires the services of the court interpreter and which language.
- (iv) Any further evidence from the Appellant must be filed and served at least 14 days before the next hearing.

13. The Appellant's appeal is allowed to the limited extent indicated, that is to be remitted to the First-tier to be heard de novo with no findings preserved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I direct that the appeal be remitted back to the First-tier Tribunal to be reheard by any Judge other than Judge Walters.

Appellant's appeal allowed to that limited extent.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 24 April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As I have set aside the decision at first instance I set aside the decision not to make a fee award. That is a matter to be dealt with at the remitted hearing before the First-tier.

Signed this 24 April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

