Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/03944/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 26 March 2019	**On 28 March 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MAHMOOD SAJID

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, NK Law Ltd
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan born in June 1972, appealed to the First-tier Tribunal ('FTT') against the decision of the respondent, taken on 14 May 2018, to refuse the appellant a residence card as a direct family member of his spouse, a British citizen ('the sponsor').

2. The respondent's reasons for refusal focussed upon the absence of sufficient evidence to establish that as claimed the sponsor was a jobseeker for the purposes of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').

3. The FTT dismissed the appeal against that decision, concluding that the appellant did not retain the status of jobseeker, given the length of time she purported to seek employment without a genuine chance of being engaged.

4. In a decision dated 9 October 2018 FTT Judge Gibb granted permission to appeal, observing that the FTT arguably failed to take into account post-decision evidence, and arguably confined itself to the period 2013-2016 when determining the key issue – the sponsor's chance of being engaged.

5. The matter now comes before me to determine whether the FTT's decision contains an error of law such that it should be set aside.

Background facts

6. The factual matrix before the FTT was mostly agreed and can be summarised as follows. The appellant and the sponsor married in France in 1998. Prior to her marriage the sponsor worked as a retail assistant in the UK between August 1997 and May 1998. The couple had four children together. Two of the children are disabled. In September 2013 the sponsor returned to the UK with her four children, whilst the appellant continued to work in France. The appellant returned to live with the sponsor and their children in the UK in September 2016. It has not been disputed that at all material times the parties enjoyed a genuine and subsisting relationship.

7. Shortly after her re-entry to the UK, the sponsor was in receipt of jobseekers allowance, in relation to which she had to demonstrate that she was seeking work. The sponsor was also in receipt of a carer's allowance in recognition of the care that she provided to her disabled children. The sponsor registered as an interpreter with an agency, DA Languages Ltd, and signed a contract with them on 4 January 2018. This required her to complete a DBS check, which was approved on 18 January 2018. The sponsor carried out work as an interpreter on 23 May 2018 and 5 June 2018. There are also numerous letters / applications (particularly for the second half of 2017 and the first half of 2018) to confirm that the sponsor was actively applying for jobs at this time. These include unsuccessful applications to a variety of employers (see pages 107-140 of the bundle before the FTT). On 11 June 2018 the sponsor started working for Zee Manufacturing Ltd, 24 hours per week.

Legal framework

8. For the purposes of the appeal to the FTT, Mr Tan agreed that the only outstanding issue in dispute was whether or not the sponsor could be said to be a jobseeker as defined in regulation 6 of the 2016 Regulations. The parties accept that the sponsor remained a jobseeker in excess of the "relevant period" defined at regulation 6(1) and as such was required to provide "compelling evidence of continuing to seek employment and

having a genuine chance of being engaged" in order to meet Condition B of being a jobseeker – see regulation 7 of the 2016 Regulations.

Hearing

9. At the beginning of the hearing Mr Tan accepted that the FTT erred in law in confining its assessment of whether the sponsor had a genuine chance of being engaged in employment to the period between her return to the UK in 2013 and her husband's return to the UK in 2016. There was an obviously much lower prospect of being engaged in employment at that time given the sponsor's caring responsibilities for her children, together with the absence of the appellant. That materially changed when the appellant began living with the family in the UK from September 2016. He was able to assist in looking after the children and the sponsor had a prima facie better chance of finding employment. Mr Tan accepted that the FTT erred in law in omitting from its assessment, consideration of the detailed evidence of applying for jobs from the second half of 2017 and eventually obtaining work as a translator prior to the decision letter and then permanent employment shortly after this – this was all available to the FTT as at the date of hearing. Although the FTT referred to the sponsor's employment in passing at [14] of its decision, it is entirely unclear to what extent if at all, it was taken into account. Mr Tan was entirely correct to concede that the FTT erred in law for these reasons.

10. Mr Tan also accepted that given the detailed evidence available, the sponsor provided compelling evidence over a sustained period of continuing to seek employment with a genuine chance of being engaged. Mr Tan also accepted that the sponsor became a worker on 11 June 2018. In these circumstances, Mr Tan accepted that I should remake the decision by allowing the appellant's appeal. The one issue in dispute has been resolved in the appellant's favour such that he meets the requirements of the 2016 Regulations.

Decision

11. The decision of the FTT contains an error on a point of law. I set it aside and re-make the decision by allowing the appeal.

Signed *UTJ Plimmer*

Upper Tribunal Judge Plimmer

26 March 2019