



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: EA/03096/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 30 March 2021**

**Decision & Reasons Promulgated  
On: 07 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**OLAREWAJU AKUNYUN AKINOLA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Ferguson, instructed by SLA Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant, a national of Nigeria born on 25 September 1956, appeals with permission against the respondent's decision to refuse to issue him with an EEA family permit under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") as the family member (spouse) of an EEA national exercising treaty rights in the UK.

3. The appellant applied on 6 February 2019 for a residence card to confirm that he was a family member of an EEA national (Irish national) exercising Treaty rights in the UK. His application was refused on 4 June 2019 on the basis that the evidence relied upon to demonstrate that his wife was exercising Treaty rights as a worker was not accepted. The appellant had claimed that his wife was employed by Heathfields Care Ltd as a carer and had provided wage slips and an employer letter purporting to confirm her employment. However, the respondent, having conducted external checks to verify the documents, noted that the wage slips submitted for Heathfields Care Ltd were found to be false and that there was no record of the sponsor having worked at Heathfields Care Ltd.

4. The appellant lodged an appeal against that decision on 28 June 2019, asserting that he had produced adequate evidence to show that his sponsor was in paid employment and exercising treaty rights as a worker and further that it was in the interests of justice and fairness that the respondent should disclose the external checks verification report.

5. Directions were made by the First-tier Tribunal on 27 September 2019 for the parties to file appeal bundles. On 8 October 2019 the appellant's solicitors produced copies of the appellant's and sponsor's passports together with further evidence of the sponsor exercising treaty rights in the UK, namely eight wage slips from February 2019 to September 2019, a letter dated 7 October 2019 from Heathfields Care Ltd and the sponsor's P60 for the tax year ended 2019.

6. The appellant's appeal was heard by First-tier Tribunal Judge Suffield-Thompson on 7 November 2019. Neither the appellant nor the respondent appeared before the Tribunal and the judge noted that the appellant had indicated that he wanted the appeal determined on the papers. The judge found that the appellant had produced no evidence to contradict the respondent's allegations in the refusal decision and concluded that he had failed to demonstrate that his sponsor was exercising her treaty rights in the UK. The judge accordingly dismissed the appeal.

7. The appellant sought permission to appeal that decision to the Upper Tribunal on the grounds that the respondent had failed to disclose the external checks verification report and that he had submitted further evidence for the appeal, none of which had been considered by the judge.

8. Permission was granted in the First-tier Tribunal and the matter came before me for a hearing.

9. Following a discussion between myself and the parties as to the evidence before the First-tier Tribunal, Ms Everett accepted that the decision was flawed by reason of the lack of recognition by the judge that the burden of proof lay upon the respondent and that the respondent had provided no evidence to support the allegation of the sponsor's documents being false. It was also

unclear whether the judge's finding, at [16], that the appellant had not provided evidence to contradict the respondent's allegations, took account of the documents referred to at [6]. Those were the documents referred to in my paragraph 5 above, as produced on 8 October 2019.

10. As to the disposal of the appeal, Ms Ferguson requested that the decision be re-made on the documentation before me and that the appeal be allowed on the grounds that there was evidence to demonstrate that the sponsor was exercising treaty rights in the UK. Ms Everett accepted that she was in some difficulty as she did not have a document verification report and therefore no evidence to support the allegations made in the refusal decision. She requested that the matter be adjourned in order to enable the respondent to produce such evidence, but she accepted that it was a matter for me whether or not such an opportunity should be provided.

11. It seems to me that there is no proper reason for the matter to be adjourned for the respondent to be given an opportunity to provide the evidence upon which she concluded that the sponsor's documents were false. There has already been ample opportunity for the respondent to have done so, with the appellant raising the matter in her grounds of appeal to the First-tier Tribunal prior to the hearing and the matter forming part of the grant of permission leading to the hearing before me. On the other hand, the appellant has continued to provide further evidence when requested and is entitled to have that properly considered. Accordingly, having set aside Judge Suffield-Thompson's decision, I have proceeded to re-make the decision on the evidence now available to me.

12. The appellant has produced a substantial amount of documentary evidence of the sponsor's employment, in the form of HMRC documents confirming her previous employment as a carer for Medicrest Ltd from 17 March 2016 to 13 August 2018 together with letters from Heathfields Care Ltd, wage slips and a P60 for her employment with that company from 15 August 2018. The evidence before the ECO included the evidence from the previous employment with Medicrest Ltd, together with two letters dated 2 July 2018 and 30 January 2019 from Heathfields Care Ltd confirming the sponsor's employment and wage slips dated 30 September 2018 to 31 January 2019. For the appeal before the First-tier Tribunal, the appellant produced the documents at my paragraph 5 above, and in response to directions from the Upper Tribunal on 22 June 2020 the appellant provided a further letter dated 1 July 2020 from Heathfields Care Ltd and a P60 for the tax year ended 5 April 2020. There is no evidence from the respondent to support the allegation made in the decision of 4 June 2019 that the wage slips for Heathfields Care Ltd were false.

13. The respondent's case is therefore nothing more than an unsubstantiated allegation and accordingly the respondent has failed to discharge the burden of proving that the sponsor's documents were false. In the absence of any evidence to support the respondent's allegation, and in the light of the numerous documents produced by the appellant which pre-date and post-date the respondent's decision, the only conclusion to be reached is that the

appellant has established that the sponsor is exercising treaty rights in the UK as a worker.

14. Given that there was no other basis for the respondent having refused the appellant's application, this appeal must succeed on the grounds that the respondent's decision is in breach of the appellant's rights under the EEA Regulations.

## **DECISION**

15. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and is re-made by allowing the appellant's appeal under the EEA Regulations 2016.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 30 March 2021