



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

Appeal Number: IA/07915/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 December 2014**

**Determination
Promulgated
On 18 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**LUCIE KUBINOVA
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms S Rahman, Home Office Presenting Officer

For the Respondent: Mr M Iqbal, Counsel, instructed by Denning Solicitors

DECISION AND REASONS

1. This is an appeal that was allowed at the First-tier, and the appellant in the Upper Tribunal is therefore the Secretary of State. For clarity and convenience, however, I will refer to the parties in this decision as they were at the First-tier.
2. The appellant, who is a citizen of the Czech Republic, and therefore an EU citizen, appealed against a decision taken under Regulation 19(3) of the 2006 Regulations. This decision was that she should be removed from the

UK on the basis that she did not have, or had ceased to have, a right to reside under the Regulations.

3. Following a hearing that she attended, and where she gave evidence, her appeal under the Regulations was allowed by First-tier Tribunal Judge Barker, in a determination promulgated on 12 September 2014. Permission to appeal was granted by First-tier Tribunal Judge Lever. This was on the basis that it was arguable that the judge's reasoning in support of his findings was inadequate. The grounds seeking permission to appeal had concentrated on the limited evidence to show that the appellant was self-employed, and complained that the findings were not open to the judge on the evidence before him, or alternatively that the reasoning was inadequate.
4. At the start of the hearing I indicated to both parties that it appeared to me, having read the papers, that this was a case in which the findings were open to the judge, and that the reasoning in the determination was adequate. Ms Rahman, for the respondent, did not concede the case on behalf of the Secretary of State, but she made very brief submissions in defence of the grounds.
5. Mr Iqbal, for the appellant, made submissions at greater length. His main submission was that the appeal had been bound to be allowed following the findings at paragraph 21 of the determination, in relation to the company that the appellant used to work for, because this was the basis of the refusal. The further matters went to the issue of whether the appellant remained qualified.

Error of Law Decision

6. In my view this was a sound determination, in which the findings were open to the judge on the evidence before him, and were adequately reasoned.
7. The judge was well aware of the difficulties with the documentary evidence. This is clear throughout the determination. Between paragraphs 14 and 23 the judge set out his reasoning at some length. There is no challenge to his findings in paragraph 21 about the validity of the company concerned. I accept the submission made on the appellant's behalf that this, in itself, rendered the decision unlawful. In the rest of the determination, however, the judge has provided a thorough and detailed assessment of the evidence presented by the appellant to show that she was working as a psychotherapist in private practice. The judge considered the appellant's oral evidence, and a range of documents.
8. In my view the grounds in reality amount to a disagreement with the outcome. If the judge had not given an indication, in his reasoning, of being alive to the weakness of the documentary evidence, then there may have been an arguable point. In a case where a judge is faced with a

situation of having to consider oral evidence, including explanations for missing items of documentary evidence, and then also consider disparate pieces of documentary evidence, it is the judge's task, often a difficult one, to make an assessment of whether the evidence as presented, noting any difficulties or inconsistencies, is sufficient to establish facts on balance of probabilities. There will be cases where the documentary evidence is insufficient to establish certain facts, but where reliance can be placed on oral evidence. There is no fixed evidential rule that it is impossible to reach balance of probability findings on oral evidence.

9. In this case it appears to me that the judge has set out clearly and in some detail his reasoning process in relation to all of the findings, and has assessed all of the relevant documentary and oral evidence. The findings appear to me to proceed from a sound, balanced, and careful assessment of what weight could be placed on the various disparate pieces of oral and documentary evidence. In short I have little hesitation in concluding that the findings reached by the judge were ones that were open to him on the evidence, and that the findings were adequately reasoned.
10. My conclusion, therefore, is that no material error of law has been established in the judge's determination. The judge's decision therefore remains undisturbed.
11. There was no anonymity order and no fee award. Neither side suggested that this position, in either respect, should change.

Notice of Decision

12. The appeal to the Upper Tribunal by the Secretary of State is dismissed.
13. The judge's decision allowing the appeal under the 2006 Regulations remains undisturbed.

Signed

Date **17 December 2014**

Deputy Upper Tribunal Judge Gibb