Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37263/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 6th May 2014	**On 7th May 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OLUBUKOLA LYUNADE OLANIRAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ojo of Graceland Solicitors
For the Respondent: Mr Melvin – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Snape promulgated on 3rd March 2014 following a hearing at Sheldon Court in Birmingham. Having considered the available evidence the Judge dismissed the appeal under the EEA Regulations.

2. Permission to appeal was sought and granted on the basis the Judge may arguably have erred in her interpretation of a 'qualified person' in terms of paragraph 6 of the Immigration (European Economic Area) Regulations 2006.

3. This is an appeal in which the Judge clearly considered the evidence and relevant case law after which she made the following finding:

> 21. In accordance with the relevant Regulations, the Appellant needs to show that her husband has been exercising Treaty rights for a continuous period of five years. In support of her case the Appellant has produced a letter from HMRC addressed to her husband dated 10 September 2013. The letter shows that in 2008 her husband earned £3,752 from Swan Mill Processing limited. In 2009, he earned £361 from ServiceMaster Contract Services, prior to which in 2008 his earnings were £4,865 from Sellers Engineering Ltd and £3,471 from Swan Mill Processing Limited.

4. The Judge found, having considered the evidence and the decision of the Upper Tribunal in Begum [2011] UKUT 275, that she was not satisfied that the Appellant's husband's activities as a worker were other than "on such a small scale as to be regarded as purely marginal and ancillary".

5. Before the Tribunal today the Judge's refusal to adjourn, specifically mentioned in paragraph 3 of the determination, was attacked although there is no merit in a claim there has been any procedural unfairness sufficient to amount to an error of law. In any event, permission to appeal was not given on this ground which has not been raised prior to today's hearing.

6. The question in issue is whether the findings made by the Judge are ones properly open to her on the evidence. The evidence that was filed is limited and it cannot be said that the findings of the Judge are outside the range of findings that were available to her on the evidence. No error of law has been established in relation to any misdirection of the law and the Judge's reasoning cannot be said to not be adequate. It is a finding that the Appellant had failed to prove her case and no more.

7. In addition to the case of Begum; in Mohammed Barry v London Borough of Southwark (2008) EWCA Civ 1440 the Court of Appeal said Community law gave the term worker a very wide interpretation. A person might be a worker even though he worked for less than the minimum wage and even if he only worked part time. The service provided had to be real and actual and not marginal or subsidiary but the duration of the work in the relevant period was not a conclusive factor in deciding whether a person was a worker for community law purposes. A worker might in the course of his employment have a number of short term jobs. The fact that Mr Barry's work for Wimbledon was of short term duration did not deprive it of its ability to render him a worker. That work was for economic value since if he had not done it the organisation would have employed someone else to do it. The work was not ancillary to any other relationship between the Appellant and the organisation and it was not marginal - a significant sum was paid for it.

8. In Kempf v Staatsecretaris van justite 19871 C.M.L.R 764 ECJ, a case which concerned a part-time music teacher giving twelve lessons a week topped up with Dutch Social Security payments, the ECJ held that so long as the work was 'effective and genuine' he was a worker for Community purposes and entitled to a residence permit even if he was also receiving public funds.

9. The failure of the Appellants husband to attend the hearing and of the Appellant to provide adequate evidence meant that the issues raised in the above cases could not be explored further by the Judge. Accordingly no error of law material to the decision to dismiss the appeal has been proved. Discussions within the hearing indicated that a fresh application is to be made supported by better evidence which the Secretary of State will be able to consider on its merits.

Decision

10. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

11. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) as there was no application for anonymity which is not justified on the facts in any event.

Signed…….
Upper Tribunal Judge Hanson

Dated the 7th May 2014