



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/47499/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4th February 2016

Promulgated

On 6th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**MR MIGUEL CORDEIRO SILVANO
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME OFFICE

Respondent

Representation:

For the Appellant: Mr Miguel Cordeiro Silvanio, in person

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision and reasons by First-tier Tribunal Judge Ford promulgated on 27th August 2015 in which she dismissed an appeal against a decision made by the Secretary of State on 7th November 2014 refusing the appellant's application for a permanent residence card as confirmation of a right to reside in the UK.

2. The appellant is a national of Brazil, born on 28th December 1969. On 21st January 2010, the appellant applied for, and was granted a residence card that expired on 22nd June 2015. On 30th August 2014, the appellant applied for a permanent residence card as the non-EEA national family member (spouse) of Vania Maria Bizzotto, an Italian national, who claimed to have exercised treaty rights for a continuous period of five years in the UK in accordance with the Immigration (EEA) Regulations 2006. It was the refusal of that application on 7th November 2014 that gave rise to the appeal before the First-tier Tribunal.
3. The application was refused by the respondent because on the evidence provided by the appellant, the respondent had been unable to establish whether the EEA sponsor had been exercising Treaty rights in the UK for a continuous period of 5 years whilst employed. Furthermore, the respondent had been unable to establish whether the appellant had resided in the UK for a continuous period of 5 years.

The decision of the First-tier Tribunal

4. The decision of the First-tier Tribunal Judge is brief. At paragraph [5] the Judge notes the appellant's claim that he has lived in England since November 2009 with his EEA national Sponsor wife and two daughters and that they are EEA nationals as well. The Judge saw the Italian passports of the appellant's wife and his two daughters, and was satisfied that all three are Italian nationals.
5. At paragraph [12] of her decision the Judge concluded that she was satisfied that the appellant has been residing continuously in the UK for a period in excess of five years.
6. The Judge concluded at paragraph [11] of her decision that she was not satisfied that either the appellant or his wife Vania Maria Bizzotto was employed continuously for a period of five years in the UK either prior to date of application or as at date of hearing. Her reasons for that conclusion are to be found at paragraphs [8] and [9] of the decision:

“8. I have reviewed the wage slips provided by the Appellant both in his name and the name of his wife. It is a matter of concern that the national insurance number quoted on both is in fact the Appellant’s national insurance number as evidenced by a copy of his national insurance card. The national insurance number is []. There is no explanation as to why the wage slips in the name of the Appellant’s wife bear his national insurance number.

9. On the evidence provided I am not satisfied that either the Appellant or his wife was employed continuously in the UK for a period of five years prior to the date of his application or prior to the date of hearing. The Appellant asked for this matter to be dealt with on the papers and I was therefore unable to clarify my concerns with him on this issue.”

The appeal before me

7. The appellant appeals on the ground that the judge erred in her consideration of the wage slips before her. The appellant contends that his national insurance number is [] and his wife’s national insurance number is []. The appellant contends that he had provided 5 years of wage slips for both himself and his wife.
8. Permission to appeal was granted by First-tier Tribunal Froom on 15th December 2015 noting that it is arguable that the Judge erred by misinterpreting the evidence before her. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Ford involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
9. At the hearing before me, the appellant maintained that he had provided the Tribunal with the relevant wage slips showing his wife had been exercising Treaty rights in the UK for a continuous period of 5 years whilst employed and that he himself has also been working during that five year period save for during the short period that he was not in the UK. The wage slips for the appellant and his wife’s

employment were contained in two separate envelopes previously sent to the Tribunal.

10. A written response was submitted on behalf of the respondent under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The respondent opposes the appellant's appeal and in summary the respondent submits that the Judge directed herself appropriately, and was entitled to make the findings that she did, on the evidence available. Before me, Mr Kotas submits that the issue for me is whether the First-tier Tribunal Judge did proceed upon a mistake as to fact. He concedes that if there is a factual error in the decision, it would be material to the outcome of the appeal.

Discussion

11. I have carefully considered the wage slips that had been presented by the appellant. There is a complete series of wage slips issued by "Deeland Ltd t/a Service Master" that are addressed to Mrs Vania Maria Bizzotto (NI No) for the period 21st December 2009 to 28th August 2015. The wage slips for the period 21st December 2009 to 6th June 2010 do not show her national insurance number but do show what appears to be her employee reference, her name and full address.
12. Save for the period between 7th January 2011 and 11th March 2012, there was also a complete series of wage slips issued by "Deeland Ltd t/a Service Master" that are addressed to Miguel Cordeiro Silvanio (NI No) for the period 15th March 2010 to 5th April 2015. I noted the following:
 - a. The wage slips for the period 15th March 2010 to 5th July 2010 do not show the appellant's national insurance number but do show what appears to be his employee reference, and his name and full address.

- b. The wage slips for the period 15th March 2010 to 9th March 2014 show the appellant as “Mrs Miguel Cordeiro Silvan”. The wage slips thereafter show the appellant as “Mr Miguel Cordeiro Silvan”.
13. In my judgement, the decision of the First-tier Tribunal does contain a mistake of fact that amounts to a material error of law. At paragraph [8] of her decision, the Judge proceeds upon the basis that there is no explanation as to why the wage slips in the name of the appellant’s wife bear his national insurance number. They do not. It is understandable that the Judge might well have been drawn to that conclusion because the wage slips for the appellant for the large part refer to him as “Mrs”. One might readily have understood those wage slips to be those of the appellant’s wife and thus be concerned that they are endorsed with the appellant’s national insurance number. They are in fact the appellant’s wage slips.
14. There was therefore evidence before the Tribunal that the appellant’s EEA sponsor has been exercising Treaty rights in the United Kingdom for a continuous period of 5 years whilst employed. The Judge proceeds upon a mistake as to fact and the decision of the First-tier Tribunal Judge is set aside.
15. The Judge found that the appellant had resided in the UK in accordance with the Regulations for a continuous period of five years and that finding is not challenged. The only issue is whether his sponsor has been exercising Treaty rights in the United Kingdom for a continuous period of 5 years whilst employed. The evidence that I have referred to, establishes that on a balance of probabilities she has, such that that Regulation 15(1) is satisfied. No argument was made by Mr. Kotas to the contrary.
16. Accordingly, I remake the decision and allow the appeal.

Notice of Decision

17. The decision of the First-tier Tribunal is set aside.
18. The decision is remade and the appeal is allowed.
19. No anonymity direction is applied for and none is made.

Signed

Date: 6th July 2016

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

I make no fee award. The appeal has been allowed on the basis of evidence that was before the First-tier Tribunal but does not appear to have been before the respondent at the time of her decision.

Signed

Date: 6th July 2016

Deputy Upper Tribunal Judge Mandalia