



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

Appeal Number: IA/04295/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 8 December 2015**

**Decision & Reasons Promulgated  
On 21 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MICHAEL AGYAPONG  
(NO ANONYMITY ORDER)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Collins, instructed by Kilic and Kilic Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Mulvena that was promulgated on 21 April 2015. Permission to appeal was granted primarily on the grounds that it was possible that the judge did not have the appellant's 285 page bundle of documents when determining the appeal.
2. At the beginning of the hearing I disclosed that the appeal file contained the appellant's 285 page bundle. It was sent with a letter dated 19 March

2015 and was stamped by the Tribunal in Manchester as received on 23 March 2015. The bundle contains statements from the appellant and his wife and a wealth of financial documentation relating to the couple. In the statements the appellant and his wife engage with the issues raised in the reasons for refusal letter.

3. I indicated to both representatives that my preliminary view was that the judge did not have access to these bundles when determining the appeal because in paragraphs 16 and 17 the judge commented that the appellant had failed to engage with the reasons for refusal. The judge could only have reached this conclusion if the statements from the appellant and his wife were not available.
4. I added that although the Tribunal received the bundle on 23 March 2015 there was no way of knowing when the bundle was linked to the appeal file. Administrative problems occur from time to time and it would appear that this might be such a case.
5. Although this was the appellant's appeal, Mr Mills addressed me first. He admitted that when preparing the case he had recognised that the Home Office had received the appellant's bundle of documents in March 2015, some weeks before the appeal was determined. He accepted my observations and conceded that in such circumstances I could only find that there had been a procedural error of such moment as to amount to a legal error.
6. I agree and find that the decision and reasons statement of 21 April 2015 contains an error on a point of law to the extent that it must be set aside.
7. Mr Mills went on to address me in respect of how the decision should be remade. He did not seek for this matter to be remitted to the First-tier Tribunal. He had examined the documents submitted by the appellant and acknowledged that there was no reason to think that any of the documents were not genuine. The bank statements revealed the earnings of the appellant's EEA spouse and that they were paid weekly throughout the relevant period. Although original documents were usually required to help the Home Office verify claims, the standard of proof in an appeal was simply a balance of probabilities and on the volume of evidence now available that standard had been met. Mr Mills invited me to remake the original decision and allow the appeal against the EEA decision of 14 January 2015.
8. I have no reason to go behind the concession made. I find, therefore, that the appellant has shown that he has acquired a permanent right of residence in the UK and that he is entitled to a permanent residence card under regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006.

## **Decision**

I allow the appeal to the Upper Tribunal because the decision and reasons statement of First-tier Tribunal Judge Mulvena contains an error on a point of law and is set aside.

I remake the decision and allow the appeal against the EEA decision of 15(1) (b).

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal