



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04888/2017

THE IMMIGRATION ACTS

Heard at Field House
On 28th February 2018

Decision & Reasons Promulgated
On 16th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ANDRZEJ DARIUSZ SOKOL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr C Avery (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Morgan, promulgated on 13th November 2017, following a hearing at Taylor House on 2nd November 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Poland, who was born on 27th February 1973. He appealed against the decision of the Respondent dated 10th May 2017 that the Appellant was not exercising treaty rights, before his incarceration, and had not acquired a permanent right of residence, such that removal directions were now issued against him.

The Judge's Findings

3. The judge observed how the Appellant had a number of convictions, the latest of which saw him receive an eight week sentence of imprisonment, but that the convictions were not the basis for the Respondent seeking to remove the Appellant. The basis of the Respondent's decision was that he had not been exercising treaty rights in the UK.
4. With respect to this particular question of the Appellant exercising treaty rights, the judge observed how the Appellant had been working in the UK since he arrived in 2012, such that there was evidence of his working for ALS, a recycling company, right the way up until 2015. However, in 2015 he did start working for JJ Food Services "where he worked for nearly a year and a half" (paragraph 7).
5. The Appellant maintained that he has "currently been offered a job with the recycling firm for whom he was working originally" and that he has not been able to start work because he has "had some difficulty opening a bank account" given that he was unable "to prove his current address" (paragraph 9). However, the Appellant maintained that "he expects to return to work at the recycling firm within the next few weeks once his bank account has been successfully opened" (paragraph 9).
6. Accordingly, the judge concluded that the Appellant was a jobseeker, who had a realistic prospect of employment, given that he had worked throughout his time in the UK, and was seeking to return to the very same recycling firm, namely ALS, for whom he had worked for three years following his initial arrival in the UK.
7. The appeal was allowed.

Grounds of Application

8. The grounds of application focus on a narrow point. It is stated that before the judge could conclude that the Appellant had a job available to which he could return, it was incumbent on the judge to ascertain that the Appellant was a "jobseeker". Under Regulation 6(2) it was clear that, "a person who is no longer working must continue to be treated as a worker provided that the person", as one who "has

registered as a jobseeker with a relevant employment office". This was not the case here. Accordingly, the Appellant could not be treated as a jobseeker.

9. On 11th December 2017 permission to appeal was granted by the Tribunal.

Submissions

10. At the hearing before me on 28th February 2018, Mr Avery, appearing as Senior Home Office Presenting Officer, on behalf of the Secretary of State, submitted that the issue of whether the Appellant was a "jobseeker" was a significant one. This is because the evidence in the Appellant's case was that he had worked from 2012 to 2015 for ALS, the recycling company. However, he had then stopped working for them and had for a period of one and a half years, worked for a food company (see paragraph 7). In the circumstances, the judge first had to be sure that the Appellant was a "qualifying person" in the manner required. The failure to apply Regulation 6 led the judge into error.
11. For his part, Mr Sokol, who appeared unrepresented at the Tribunal, stated that he was currently not working and he was not registered with a Jobcentre either. The reason for this, he explained, was that when he had last gone to the Jobcentre he had been told that given his very limited English language capabilities, he would have to return back so that a more appropriate job could be considered for him. He was presently receiving the assistance of the Probation Service. Given this, he now had a meeting with them next week.
12. However, he confirmed that at the time of the hearing before Judge Morgan, he had nothing in writing to confirm that he did have a job with ALS, with whom he had previously worked for three years. They could not give him anything in writing quite simply because he had no bank account. He had no bank account because he did not have a stable address. He was hoping now in the next few weeks to be able to remedy all these deficiencies.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
14. This is a case where there is a great deal of uncertainty about the Appellant's position. Save for the fact that he had worked for ALS for three years immediately after his arrival, everything else is uncertain. It is certainly not the case, as required by Regulation 6(2) that he is registered as a jobseeker "with the relevant employment office". Indeed, his efforts to attempt to do so have been thwarted by the fact that his

English language capabilities had been limited and so he has been turned away. The matter needed proper determination upon the evidence.

15. The Appellant also did not have a bank account so that his previous employers, ALS, felt reluctant in being able to give him a job because they did not know where to send his salary to.
16. To all intents and purposes, therefore, the more that the factual situation has been considered, the more it would appear that the Appellant would have struggled to meet the requirements of Regulation 6(2).

Remaking the Decision

17. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today.
18. I am allowing this appeal to the extent only that this matter is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Morgan pursuant to practice statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. This has also been the submission before me by Mr Avery appearing for the Respondent Secretary of State.
19. No anonymity direction is made.
20. This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

14th March 2018