Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/10599/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 20 March 2018	**On 17 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR KOMRAD ATLINSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Poland, date of birth 10 July 1973, appealed against the Respondent's decision, dated 15 August 2016, to remove him with reference to Section 10 of the Immigration and Asylum Act 1999

which applies by virtue of Regulation 19(3)(a) pursuant to Regulation 21B(2) and 24(2) of the Immigration (EEA) Regulations 2006.

2. The appeal against that decision came before First-tier Tribunal Judge O'Neill, (the Judge) who, on 27 July 2017, dismissed the appeal. The Appellant was not represented at the hearing of the appeal. An appeal against the Judge's decision [D] was made by Mr Clark, care of the Bradford Deaf Centre, on 7 August 2017. Permission to appeal was given by First-tier Tribunal Judge Bird on 22 January 2018.

3. Notice of hearing of the appeal was sent to the Appellant at his last identified address in Little Horton Lane, Bradford on 13 February 2018 as well as to Mr Clark at the Bradford Deaf Centre. Directions were contained with the notice of hearing, and the notice of hearing stated "if a party or his representative does not attend the hearing the Tribunal may determine the appeal in the absence of that party".

4. The Appellant and/or Mr Clark did not attend, no explanation for absence was forthcoming, no request for an adjournment or a relisting of the case was made either in advance or at the hearing, and there was no indication as to why the Appellant or his representative did not attend.

5. In the circumstances, having checked the case file I was satisfied that proper notice of hearing had been given in good time as required under the Rules and the notice identified the date, the time and the venue for the hearing. The Secretary of State had received notice of the hearing and thus Mr McVeety attended.

6. The permission that was given stated as follows:

> "2. … It is alleged that the appellant provided written evidence of his employment which the judge did not accept and in doing so set too high a standard of proof.

3. It is arguable that the judge failed to give adequate reasons for rejecting the letters from the appellant's employers – particularly as no suggestion of fraud had been made by the respondent or that the employments had been checked and could not be verified. The evidence of the employment had been submitted with the grounds of appeal. It was also mentioned at Annex A1 to the respondent's bundle".

7. The Judge also in granting permission makes a somewhat delphic reference to public security grounds and the need for imperative grounds because the Appellant had claimed to be in the United Kingdom for ten years.

8. Those grounds do not reflect the facts of the case, nor was removal being sought on any basis other than that the Appellant had ceased to reside under the terms of the Regulations, i.e. as a qualified worker, so as to meet the requirements of Regulation 4 of the 2006 Regulations.

9. The grounds of appeal settled it seems by a Mr Baker of Biasan essentially argued that the Appellant had submitted evidence of the necessary chain of employment to showed he was qualified person. The Judge in the decision set out [D23 to 31] the documentation with which he had been provided and why he did not find it sufficient. Those reasons were the Judge's, which he was entitled to give and as is clear from [D35] the Judge said that the Appellant had not shown on the balance of probabilities that he was a worker.

10. I do not find on a fair reading of the decision that there is anything that demonstrated too high, i.e. above a balance of probabilities, a standard of proof was applied to the evidence. On the contrary, for reasons which the Judge gave he did not find the Appellant a credible witness and he found the Appellant to be contradictory, evasive and implausible. The Judge did

not believe the Appellant's evidence and as he said [D33] in the light of his findings on the Appellant's credibility he was not inclined to accept these were genuine letters from employers: For other reasons he also identified why the letters were not sufficient. The Judge made the point that the Appellant was unable to produce any formal document normally associated with establishing worker status, nor a letter of engagement, no contract of employment, no wage slip, no letters from HMRC, no P60 forms or any other form of documentation.

11. In doing so that was not applying a higher standard of proof; those are documents commonly produced in such EEA appeals and tend to show whether a partner or an Appellant is a qualified person for the purposes of the Regulations 2006. I can find nothing that suggests that the wrong standard of proof was being applied, nor was the Appellant being set unreasonable targets of documentation to produce. The grounds refer to it being unreasonable to have asked an unprepared and unrepresented Appellant for the documentary evidence necessary. The fact is that the Appellant had been represented by immigration advisors and there was nothing unduly onerous even for litigants in person to produce relevant documents that evidence their employment. The Judge [D3] asked the Appellant whether he wished to continue on the day with the representations without assistance and he indicated that he did.

12. The grounds settled by Mr Baker also make reference to the Appellant's wife, a Polish national, being in full-time employment and with wage slips from her employment as evidence. If that was so it was not produced to the Tribunal and other information suggested rather strongly that the Appellant's wife was in Poland and looking after and caring for the Appellant's mother. How it can therefore be thought she was a qualified person in the sense of working in the UK exercising treaty rights I do not know and the grounds simply do not adequately explain the matter. Either way, she had not provided such evidence in support of his appeal and the fact that she might be working in any event was not the issue

being addressed: Rather the extent of the Appellant's employment was the issue which had been raised by the Respondent's decision to remove.

13. Accordingly, I do not conclude that the Judge's decision disclosed any material error of law. The Judge reached a conclusion that he was entitled to on the evidence and there is no demonstrable unfairness or prejudice demonstrated by the Judge's consideration of those matters at the appeal.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY

No anonymity direction was sought nor is one required.

Signed Date 28 March 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed, therefore no fee is payable.

Signed Date 28 March 2018

Deputy Upper Tribunal Judge Davey