



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002450

First-tier Tribunal No:
EA/05525/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 26 March 2023**

Before

**UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAVEED AHMED

Respondent

Representation:

For the Appellant: Mr F Gazge, Senior Home Office Presenting Officer

For the Respondent: Mr N Ahmed, Counsel, instructed by Wright Justice Solicitors

Heard at Birmingham Civil Justice Centre on 31 January 2023

DECISION AND REASONS

1. The appellant in the appeal before us is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Naveed Ahmed. However, for ease of reference, in the course of this decision we adopt the parties' status as it was before the FtT. We refer

to Mr Ahmed as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Pakistan. On 6 May 2020 he applied for a residence card to confirm he is a family member of an EEA national exercising treaty rights in the UK. His sponsor is Ms Sidra Mahmood Bi. The application was refused by the respondent for reasons set out in a decision dated 8 October 2020.
3. The respondent considered the application under Regulation 6 of the Immigration (European Economic Area) Regulations 2016 (as amended) and determined that the appellant had not provided adequate evidence to show that he qualifies for a right to reside as the family member of his EEA sponsor. The respondent noted the claim made by the appellant that his sponsor is temporarily unable to work as a result of the stroke she suffered in August 2016. The respondent referred to the evidence relied upon by the appellant and whilst acknowledging that the sponsor is in receipt of Personal Independence Payments, concluded the appellant had failed to provide adequate evidence that his EEA family member, Sidra Mahmood Bi, is currently incapacitated.
4. The appellant's appeal was allowed by First-tier Tribunal Judge Robertson ("Judge Robertson") following a hearing on 18 January 2022, for reasons set out in a decision promulgated on 2 March 2022. The lengthy background to the appeal is summarised in paragraphs [2] to [7] of the decision. Judge Robertson identified the issue before the Tribunal at paragraph [8] of the decision. She heard oral evidence from the sponsor as set out in paragraphs [9] to [12] of her decision. The findings and conclusions reached by Judge Robertson are set out in paragraphs [13] to [22] of the decision.
5. The respondent claims Judge Robertson erred in law by allowing the appeal by finding that the sponsor is a qualified person having retained worker status under Regulation 6 (2)(a) of the Immigration (EEA) Regulations 2016. The respondent submits Judge Robertson "*failed to obtain any necessary evidence*" to show that the sponsor meets Regulation 6(2) as the sponsor was only employed for 4 months in 2016, then had a baby, and shortly after, suffered a stroke. The respondent submits the appellant receives Personal Independence Payments and has not been employed since 2016. The sponsor has not registered for work since 2016 and is presently unable to work. As such the respondent submits, the sponsor is not qualified person under Regulation 6 (2) of the EEA Regulations.
6. Permission to appeal was granted by First-tier Tribunal Judge Burnett on 29th April 2022.
7. Before us, Mr Gazge accepts the appellant's claim is that his sponsor is a qualified person as a 'worker', rather than a 'jobseeker', and the issue for the First-tier Tribunal was whether the sponsor should continue to be

treated as a worker because she is temporarily unable to work as the result of an illness. Mr Gazge submits Judge Robertson speculated in reaching her conclusion that the sponsor's inability to work is temporary, given the history. The appellant was only employed for 4 months in 2016 before having a baby and then suffering a stroke. She has not worked since 2016. Mr Gazge submits Judge Robertson did not look at all the evidence in the round in reaching her decision.

8. In reply, Mr Ahmed adopted his Rule 24 response dated 30th January 2023 and submits the decision to allow the appeal for the reasons set out in the decision, was one that was open to Judge Robertson.

Discussion

9. Having carefully considered the decision of Judge Robertson and the submissions made before us, we are satisfied that the decision reached by Judge Robertson was one that was open to her on the evidence before the Tribunal.
10. Judge Robertson properly identified the issue in the appeal in paragraphs [8] and [13] of her decision. At paragraphs [10] to [12] of her decision she refers to the relevant chronology and evidence before the Tribunal. She had regard to the medical evidence available regarding the stroke suffered by the sponsor and treatment that followed. She refers to the medical certificates confirming the sponsor was not fit to work between 25th February 2017 and 22nd February 2019, and the letter from the sponsor's GP dated 7th January 2022 confirming the sponsor has been unable to work with a further medical certificate. She also noted the evidence before the Tribunal confirming the sponsor receives Personal Independence Payments. Having concluded that the work previously undertaken by the sponsor has been effective and genuine, Judge Robertson was satisfied that the sponsor was exercising Treaty rights as a worker and was a qualified person for the purposes of the Regulations, prior to her illness. She went on to consider whether the sponsor is temporarily unable to work as a result of her illness. She again referred to the evidence before the Tribunal and at paragraphs [21] said:

“The final consideration was whether the sponsor's inability to work was temporary. On this point my only guidance is the fact that all the medical certificates have been issued for 3-month periods and the PIP award is not indefinite. The sponsor is a young woman who has undergone rehabilitation and the evidence does not suggest that her inability to work was permanent.”

11. Judge Robertson found there to be sufficient evidence to find that the sponsor is a qualified person having retained worker status under Regulation 6 (2)(a) of the Immigration (EEA) Regulations 2016. It is not for this Tribunal to consider whether we would have reached the same decision on the evidence that was before the First-tier Tribunal. It is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be

given to different factors. Reading the decision of Judge Robertson as a whole we are satisfied that the findings made and decision reached, were open to the judge.

12. It follows that in our judgement, the decision of the First-tier Tribunal is not vitiated by a material error of law and the appeal is dismissed.

Notice of Decision

13. The respondent's appeal is dismissed. The decision of First-tier Tribunal Judge Robertson promulgated on 2nd March 2022 stands.

V. Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31st January 2023