

## **Illegal workers- Okuoimose v City Facilities**

Mrs Okuoimose is a Nigerian woman married to a Spanish national. She gained the right to take up employment in the UK because she was a family member of a European citizen who had the right of residence in a Member State. Her passport stamp said that her right of residence expired on 8<sup>th</sup> July 2010.

She worked as a cleaner for City Facilities up to 8<sup>th</sup> July 2010. On this date the employer suspended her without pay because it alleged that the contract of employment was now illegal and requested that she provide evidence of her eligibility to work in the UK. Mrs Okuoimose initiated an application to renew the permit on her passport. She was dismissed on 20<sup>th</sup> August 2010 on the grounds of illegality.

Later the same day she produced a letter dated 16<sup>th</sup> August from the Border Agency which said that until her application had been decided she would be treated for immigration purposes as being free to work and live in the UK. City Facilities reinstated her but she went off on sick leave and claimed reimbursement of wages during the suspension period. The Employment Tribunal considered the fact that Mrs Okuoimose had not produced evidence which showed her entitlement to work in the UK and also the penalties that could have been imposed on the Respondent if they had employed an illegal immigrant and came to the conclusion that the contract of employment was illegal. The Claimant appealed.

The EAT accepted her argument which was that she had not in fact lost the entitlement to work in the UK simply by reason of her failure to obtain a new stamp in her passport. She had a right to work by reason of her status as a family member of an EU national which did not depend upon letters written by the UK Border Agency.

A stamp in a passport may be evidence of the right to stay and work in the UK, but it does not create that right in itself. If a right exists then the expiry of a passport stamp will not alter that fact, and will not make continued employment illegal.

The employer had contacted the UK Border Agency who responded by saying they had "checked their records... and cannot confirm that this individual is currently entitled to work in the UK on the basis of an outstand application.

Although the employer may have thought it reasonable to take action as they did, at it turned out, their decision to act that way was not actually based on fact.

### **Actions for Employers**

- When carrying out eligibility to work in the UK checks, where an employee appears not to have a legal right to work in the UK ensure that you locate and assess evidence to support this. An honest belief that a worker is illegal which is not evidence based may be challenged in court at a later date.