

Civil Penalty Compliance Team
PO Box 665
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Civil Penalty Objection - Reference: 321677

Date: 20th January 2023

Business Name: Yarkam Limited

Business Address:
273 Abingdon Road
Oxford
Oxfordshire
OX1 4TJ

Further Submission Following the Objection Outcome Notice:

The liable party respectfully sets out the following reasons for reconsideration of the imposed penalty:

1. The liable party acknowledges, and appreciates, your consideration of this matter thus far, and understands that you have cancelled the imposed penalty relating to due to the fact that a statutory excuse had been established. Although you have considered the case of the further two named individuals you have decided to maintain the corresponding imposed penalties.
2. Yarkam Limited was previously served with an illegal working civil penalty on 06 September 2018. Since this time, the management team have exercised diligence in ensuring that document checks are completed on all new employees to establish a valid right to work. The evidence of these checks has been provided to you in the form of immigration documents and Home Office check lists.
3. In this course of this process the liable party has provided the following documents:
 - a) Md Iftekhar – Residence Permit illustrating ‘spouse/partner leave to remain’ and ‘work permitted’ valid from 28 July 2021 until 30 November 2023
 - b) Mujibur Rahman – Application Registration Card illustrating ‘indefinite leave to remain’ and ‘work permitted’ valid from 18 November 2021 until 18 August 2023
 - c) Md Ikbal Hussain – Application Registration Card illustrating ‘leave to remain’ and ‘work permitted’ valid from 01 October 2022 until 01 September 2024

Each document was accompanied by an official Home Office check list available online <https://www.kent.ac.uk/human-resources/immigration/forms-docs/Right%20to%20Work%20Checklist.pdf> The Home Office check lists illustrate, in great detail, the steps which had been taken to validate the employees right to work.

4. Leaving aside the document relating to Md Iftekhar (as a statutory excuse has been established), document checks were carried out as follows:

Mujibur Rahman

As the code is referred to in order, the first example of a valid document believed to have been held by the employer is found at number 5 within 'List A' - a current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK.

The liable party has evidenced the copy of an Identification card which, to the layperson, would appear to be an immigration status document. It would seem perfectly feasible that this document be recognised as an 'immigration status document' as it is a document which illustrates the immigration status of the holder. This document was honestly thought to have provided a statutory excuse in relation to the employment of Mujibur Rahman.

Md Ikbal Hussain

Continuing through the code in order, the next example of a valid document thought to be held by the employer is found at number 3 within List B - a current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question.

Again, the liable party has evidenced the copy of an Identification card which, to the layperson, would appear to be an immigration status document. It would seem perfectly feasible that this document be recognised as an 'immigration status document' as it is a document which illustrates the immigration status of the holder. This document was honestly thought to have provided a statutory excuse in relation to the employment of Md Ikbal Hussain. However, the liable party also accepts that the date on the card did not cover the employment period in full.

The liable party submits that the code of practice is not simple to understand and their interpretation of an immigration status document fits with the examples found within section 5 of list A and section 3 of List B.

5. In consideration of the objection made by the liable party you made a decision to reduce the penalty amount, specifically, cancelling the penalty in relation to Md Iftkhar. This decision was made despite the fact that the document is deemed to be a false document and the fact that the code of practice requires an accompanying national insurance document. However, you have accepted that the liable party had established a statutory excuse in relation to this individual and you have cancelled the penalty accordingly. You cite that the Residence Permit is false but you make no mention of the fact that it would, or would not, have been reasonably apparent to the untrained person.
6. The Code of practice on preventing illegal working: 6 April 2022 illustrates the steps which must be taken by an employer to provide themselves with a statutory excuse. The liable party understands and had completed the three basic steps to conducting a manual document-based right to work check.
7. Although they are not trained in recognising a false document, the liable party carried out checks on all of the documents to ensure that they were genuine, that the person presenting them was the prospective or existing employee and that the photograph and dates of birth were consistent across documents and with the person's appearance. The liable party took all reasonable steps, that is to say briefly but carefully examined the documents without any technological aids, to check the validity of the documents presented to them.

8. If an employer is given a false document, they should only be liable for a civil penalty if it is reasonably apparent that it is false. "Reasonably apparent" means: where a person who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids could reasonably be expected to realise that the document in question is not genuine.
9. The liable party submits that the false documents were not reasonably apparent. It is also argued that the quality of all three documents submitted are of a comparable standard and to allow a statutory excuse for one but not the other two demonstrates a lack of consistency in decision making.

Summary

10. The employer in this case has acted in the spirit of the code and has made genuine attempts to abide by the code of practice.
11. The liable party has established a statutory excuse in relation to Mujibur Rahman to the same standard as that relating to Md Iftekhhar and therefore should benefit from the same discretion in cancelling the related penalty. This would support a consistent approach to decision making.
12. With regards to this current matter, the liable party has been transparent, honest and compliant with officers and the CPCT in all matters relating to employment and document checks.
13. If advanced to the submission of the appeal, the Court may consider the above, and it may do so under 17(3)(b) of the 2006 Act by considering any matters which it thinks relevant. Such discretion may be applied by the Court in the exercise of its statutory power to allow any appeal and cancel the penalty under 17(2)(a) of the Immigration, Asylum & Nationality Act 2006.
14. By virtue of section 17(3) of the 2006 Act the appeal would be by way of rehearing of the Secretary of State's decision to impose the penalty rather than a review of the decision. It would therefore be for the Secretary of State to establish that the grounds are made out for imposing a penalty. The burden would not be on the liable party.

Yarkam Limited