



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15261/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 9 October 2014

Determination Promulgated
On 20 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KANAKO HANAOKA (MANNBERGER)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: the respondent in person

DETERMI

NATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.
2. The appellant, a national of Japan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse to issue her with a permanent residence card under regulation 15 of the Immigration (European Economic Area) Regulations

2006 (the EEA Regulations). First-tier Tribunal Judge Agnew allowed the appeal and the Secretary of State now appeals with permission to this Tribunal.

3. The issue in this appeal is whether the appellant has demonstrated that she has acquired a right of permanent residence in the UK under regulation 15 of the EEA Regulations through residing with her husband, an Austrian national, in accordance with the Regulations for a continuous period of five years.
4. According to the respondent's summary of the appellant's immigration history she entered the UK on 5 March 2007 with a family permit to join her husband and was issued with a residence card in September 2007 which was valid until 25 September 2012. She applied for permanent residence on 14 January 2014.
5. The First-tier Tribunal Judge noted that the appellant's husband was employed through an agency called Resource Solutions from March 2009 and March 2013. She identified a gap in the evidence from August 2009 until August 2010 [7]. She said that there were 2 P60s covering the years 2008-2009 and 2009-2010 but no payslips for the period from August 2009 until August 2010. The Judge also noted that the appellant's husband set up a consultancy company in 2011 and has worked since early 2012 for Barclays Capital as a consultant. The Judge considered all of the evidence and said that she considered it necessary to establish only that the appellant's husband has been working either as an employee or as a self-employed person in the UK over the five year period.
6. The grounds of appeal contend that the First-tier Tribunal Judge erred in failing to make a finding on a material matter, that is the identified gap in the evidence as to the appellant's husband's activities between August 2009 and 31 July 2010. The grounds of appeal wrongly identify the issue for determination as whether the appellant's EEA national spouse had '5 years continuous employment in the UK'. The question under regulation 15 of the EEA Regulations is whether the appellant can demonstrate that she acquired a right of residence on the basis that her husband 'resided in' the UK 'in accordance with' the Regulations for 'a continuous period of five years' and whether she has resided with him during that period in accordance with the Regulations. It is therefore continuous residence in the UK in accordance with the Regulations rather than continuous employment which must be established. The relevant extracts of regulation 15 provide as follows;

15. (1) The following persons shall acquire the right to reside in the United Kingdom permanently –

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

(b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

...

Error of Law

7. The Judge had before her P60 end of year certificates for 2008-09 and 2009-10. Both were issued by Newquay Professional Limited. These show that the appellant's

husband was paid £18,337 in 2008-09 and the same amount in 2009-10. Mr Whitwell accepted that the P60s show employment during those years but submitted that they do not establish that the appellant's husband was continuously employed during that period.

8. However as identified above the appellant does not have to show that her husband was continuously employed throughout the period. The nature of consultancy work may be that a person is not employed every day. The P60s along with the payslips show that the appellant's husband was working through agencies up until he set up his own consultancy company in January 2011. The P60s show that he was paid a reasonable amount (£18,337) per year in 2008-09 and 2009-10. He did not have to show that he was working every day and it is reasonable to assume that those P60s represent employment throughout most of those years. The Judge considered all of this evidence in the round and also had evidence before her that the appellant and her husband were living together in the form of Council Tax bills covering the whole period. I am satisfied that the Judge was entitled to attach weight to the P60s along with all of the other evidence and was entitled to conclude that this evidence demonstrated that the appellant's husband had been employed or self-employed throughout the relevant period.
9. I note that the Judge did not identify which 5 year period she was looking at. The first P60 covers the period from March 2008. It is likely that the five year period began to run when the appellant was admitted to the UK or at the latest when she was issued with a residence card in September 2007. She could therefore have acquired permanent residence any time from five years later, in September 2012, provided her husband was exercising treaty rights throughout the period. In this case, as the appellant's husband was still employed or self-employed at the time of determination of the appeal in July 2014, the failure to identify the relevant five year period is not material.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of an error on point of law.

The decision of the First-tier Tribunal shall stand.

Signed

Date: 18 November 2014

A Grimes

Deputy Judge of the Upper Tribunal