



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/28747/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 30<sup>th</sup> September 2014

Determination Promulgated  
On 30<sup>th</sup> September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

JUDITH OLGA AKA  
(NO ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Gentili, Islington Law Centre  
For the Respondent: Ms Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Cote D'Ivoire date of birth 9<sup>th</sup> May 1969. She appeals against the decision of the First-tier Tribunal (Judge Higgins) to dismiss her appeal against the Respondent's decision to refuse to issue her with a residence card as confirmation of her right of permanent residence in the UK as the spouse of an EEA national exercising treaty rights.

2. The Appellant asserts that she has a right of permanent residence with reference to Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006:

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;

...

3. The Respondent refused to issue a residence card to confirm the same on the grounds that the Appellant had not demonstrated that her French husband, a Mr Claude Yapo, had been residing continuously in the UK for five years in accordance with the Regulations, ie exercising treaty rights. The Appellant had submitted two wage slips and P60 as evidence of her husband's employment during the relevant period. The Respondent did not consider this evidence adequate.
4. On appeal the First-tier Tribunal heard oral evidence from the Appellant and had regard to further documentary evidence that she had provided. It appears to have been accepted that Mr Yapo had been a 'worker' for the purpose of the Regulations from 2004 to sometime in 2009/2010 when he took a 'career break' and was claiming jobseekers allowance; he started work again in 2011. On these facts the Tribunal found that he could not show a continuous period of residence in accordance with the Regulations and the appeal was dismissed. The determination records that the evidence submitted included P60s that appeared to show that Mr Yapo had been working continuously in the UK between sometime in 2003 and April 2014.
5. The grounds of appeal to this Tribunal are that the First-tier Tribunal erred in:
  - a) Failing to consider whether Mr Yapo had already acquired a right of permanent residence before his 'career break' in which case the Appellant's residence with him in the UK was always "in accordance with the Regulations"; *or in the alternative*
  - b) Failing to consider whether Mr Yapo continued to be a qualified person. The Appellant had produced all of his P60s over a ten year period all of which showed earnings of over £20,000 pa except the years ending 4/10 and 4/11 in which he only earned £11,452 and £17,852. It is submitted that the First-tier Tribunal erred in finding that he was not working during these years (the sums shown would appear to contradict the evidence of the Appellant

- that he had taken a career break) or alternatively erred in failing to consider whether he was a jobseeker during any breaks in employment.
6. Before me Ms Holmes conceded that both grounds are made out. The P60s had not been challenged by the Respondent and these showed that Mr Yapo was exercising treaty rights as a worker between 2003/04 and 2008/9. At the end of that five-year period he acquired permanent rights of residence, and was therefore thereafter living in the UK “in accordance with the Regulations” (see for instance Dias<sup>1</sup>). The First-tier Tribunal appears to have concentrated on the Appellant’s evidence that her husband had decided to take a ‘career break’ sometime after the birth of their child. Her evidence was that he would say he was going to the library and would be out all day (see paragraph 11 of the determination). The determination does not reconcile that evidence with the P60s, which indicate that if Mr Yapo in fact continued to work throughout the years in question.
  7. I am satisfied that the determination does contain an error of law. The skeleton argument placed before the First-tier Tribunal by Mr Gentili raises the argument that Mr Yapo had already acquired a permanent right of residence before any ‘career break’ and the appeal should, on the evidence available, have been allowed on that ground. Further the P60s show that the gentleman did in fact continue to exercise treaty rights throughout the period considered relevant by the First-tier Tribunal, the five years immediately preceding the application.

### **Decisions**

8. The determination of the First-tier Tribunal contains errors of law and is set aside.
9. I re-make the decision in the appeal by allowing the appeal.

Deputy Upper Tribunal Judge Bruce  
30<sup>th</sup> September 2014

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<sup>1</sup> Dias (European citizenship) [2011] C-325/09, Lassal (European citizenship) [2010] C-162/09