



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/28175/2013  
IA/28181/2013

**THE IMMIGRATION ACTS**

**Heard at Belfast  
On 26 June 2015**

**Determination Promulgated  
On 17 September 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**IV  
DM**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr A Natur, Solicitor, Natur Solicitors

For the Respondent: Mr M Matthews, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The first appellant is citizen of Ukraine born on 26 June 1982. The second appellant is her son, born on 11 April 2009. Applications were made by both appellants for residence cards. The applications were refused in decisions dated 18 June 2013.
2. The appellants appealed against those decisions and their appeals were heard by First-tier Tribunal Judge Grimes on 18 September 2014. Although the appeal of the first appellant was dismissed under the EEA Regulations

and on human rights grounds, the appeal of the second appellant was allowed under the EEA Regulations. There has been no appeal by the respondent against that decision. Accordingly, the appeal of the second appellant has been listed in error before the Upper Tribunal and no further decision is required in his case.

3. At the hearing before me it was conceded on behalf of the respondent that there was an error of law in the decision of the First-tier Tribunal as regards the first appellant, who I shall now refer to as the appellant. In the light of that concession, my decision can be expressed relatively concisely.
4. The appellant arrived in the UK in March 2005 and was issued with a residence card on the basis of marriage from 19 June 2007 to 19 June 2012. This was in relation to her marriage to a Latvian national, PP. She returned to Ukraine and was issued with an EEA family permit on 19 July 2011. The subsequent application for a residence card was that which is the subject of the proceedings before the First-tier Tribunal.
5. After a detailed and careful examination of the documentary evidence in relation to the appellant's husband, the First-tier Judge concluded that at the date of his marriage to the appellant he was in employment in the UK. She found that he continued to be employed until April 2008. Again, after further consideration of the documentary evidence she found that the appellant and he were married for five years by December 2011 and that PP was a worker and thus a 'qualified person' throughout that period.
6. At [17] it was found that the appellant and PP remain married and that the appellant was the spouse and therefore the family member of a qualified person for a period of five years. This led her to conclude that the appellant had acquired a permanent right of residence on 15 December 2011 pursuant to Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").
7. Judge Grimes went on at [18] to consider evidence of PP's continuing employment and she concluded that the evidence did not establish that he was so employed. She thus concluded that the appellant was not able to demonstrate that she is entitled to a residence card. At [19] she stated that the EEA decision was to refuse to issue a residence card and as that was an application for a residence card and not for a permanent residence card she was unable to allow the appellant's appeal.
8. Consideration was given to Regulation 15A in terms of a derivative right of residence, the judge concluding that the appellant was not able to establish her entitlement in that respect.
9. Lastly, there was a consideration of the extent to which the appellant was able to meet the requirements of the Article 8 Immigration Rules and Article 8 proper. I need not set out the reasoning and findings in that respect.

10. Before me the parties drew my attention to the judge's finding that the appellant had acquired a permanent right of residence by reason of her husband's exercise of Treaty rights for a period of five years. There was no challenge to that assessment on behalf of the respondent. It was also agreed by the parties that the First-tier Judge had wrongly concluded that the appellant needed to demonstrate that her husband continued to be a qualified person. However, regulation 15(2) states that the right of permanent residence shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years. As at the date of hearing, the evidence was that he was still in the UK.
11. Mr Matthews drew my attention to Regulation 17(1) which states that the Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a permanent right of residence under regulation 15 on application and production of a valid passport and proof that the applicant is such a family member. In those circumstances, it was accepted on behalf of the respondent that the appellant was entitled to the residence card that she had applied for. Thus, the appeal should have been allowed on that basis.
12. Notwithstanding the arguments advanced in the grounds of appeal against the decision of the First-tier Tribunal, in terms of a derivative right of residence and Article 12 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community, the parties agreed that those issues did not require further consideration.
13. In these circumstances, I am satisfied that there is an error of law in the decision of the First-tier Tribunal requiring the decision to be set aside. I re-make the decision by allowing the appeal.
14. Although I have found an error of law in the decision of the First-tier Tribunal, it is important to record that it is evident from the determination of the First-tier Judge that a great deal of care and effort was undertaken in the analysis of the documentary evidence before her in terms of the employment history of the appellant's husband. There was a considerable amount of material that required to be considered and that careful analysis resulted in the conclusion as to PP having acquired a permanent right of residence, and when.

*Decision*

15. The decision of the First-tier Tribunal involved the making of an error on a point of law. That decision is set aside and the decision re-made, allowing the appeal under the EEA Regulations.

Upper Tribunal Judge Kopieczek

15/09/15