



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16038/2012

THE IMMIGRATION ACTS

Heard at Field House
On 30 August 2013

Determination Promulgated
On 27 September 2013

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SSH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Asanovic, instructed by Turpin & Miller Solicitors
For the Respondent: Mr S Ouseley, Senior Presenting Officer

DETERMINATION AND REASONS

INTRODUCTION

1. The appellant, a national of the United States, born 28 December 1961, has been granted permission to appeal the determination of First-tier Tribunal Judge Bart-Stewart dismissing her appeal against the decision dated 5 July 2012 refusing the

issue of a permanent residence card pursuant to the Immigration (European Economic Area) Regulations 2006, Regulation 15(1)(b). I heard argument on error of law on 3 April 2013 and reserved my decision. On 18 April I made my decision that the judge had erred in law. My reasons with minor modification are incorporated in this determination at [2] to [23]. At a further hearing on 2 May disclosure orders were made addressed to parties who were considered to be able to provide evidence that the appellant's husband had worked in the UK: Firstline Locums, Leicester Royal Infirmary and Shifa Medical Centre. At a resumed hearing on 30 August I heard evidence from the appellant and a witness Ms B.

DECISION THAT THE F-TT ERRED IN LAW.

2. Permission to appeal was refused by First-tier Tribunal Judge Coates. However the appellant was successful on renewal of her application to the Upper Tribunal where Upper Tribunal Judge McGeachy gave these reasons for granting permission:

- “(1) The grounds of appeal assert that the appellant is entitled to a permanent residence card under the Immigration (EEA) Regulations 2006 as she was the wife of an Italian exercising Treaty rights here. They also claim that she was the parent of children in education here.
- (2) The Judge of the First-tier Tribunal found that there was no evidence to back up the appellant's assertions that her husband was working her[e] for the relevant period despite the respondent having made searches to find out whether or not he was exercising Treaty rights here. That was a conclusion that was open to her.
- (3) However, although the Judge of the First-tier Tribunal pointed out that the appellant's children are adults it is, just, arguable that following the decision and opinion of advocate General Bot given on 15 January [2013] on the reference of the Tribunal following the appeal of *Alarape* (Article 12 EC Regs 1612/68 (Nigeria) [2011] UKUT 413 that the Judge of the First-tier Tribunal placed insufficient weight on the mental condition of the appellant's daughter and her need for the appellant to be with her here. In these circumstances I will give permission to appeal.”

3. Miss Asanovic opened her submissions with the explanation that she no longer relied on the grounds challenging the judge's conclusions regarding the claim to be permanently resident under reg.15(1)(f). In addition she no longer pursued the challenge to the judge's conclusions regarding the claim for a retained right of residence (reg.10(6)) and so abandoned paragraph 14 to 17 of the grounds. Instead she based her application on the judge's treatment of the derivative right of residence under reg.15A.

4. By way of amplification of those grounds, Miss Asanovic argued the judge had erred in two ways. The first was with reference to the judge's direction at [16] of her determination that the derivative rights incorporated in the 2012 amendments to the Regulations do not apply as the children are over 18 years old. She relied on reg.15A(4) which is as follows:

- “(4) *P satisfies the criteria in this paragraph if –*

- (a) *P is the primary carer of a person meeting the criteria in paragraph (3) ('the relevant person'); and*
- (b) *The relevant person would be unable to continue to be educated in the United Kingdom if P were required to leave."*

5. This provision follows regulation 15A (1), (2) and (3) which provide:

"(1) A person ("P") who is not entitled to reside in the United Kingdom as a result of any other provision of these Regulations and who satisfies the criteria in paragraph(2), (3), (4) or (5) of this regulation is entitled to a derivative right to reside in the United Kingdom for as long as P satisfies the relevant criteria.

(2) P satisfies the criteria in this paragraph if-

- (a) P is the primary carer of an EEA national("the relevant EEA nationa"); and*
- (b) the relevant EEA national –*
 - (i) is under the age of 18*
 - (ii) is residing in the United Kingdom as a self sufficient person; and*
 - (iii) would be unable to remain in the United Kingdom if P were required to leave.*

(3) P satisfies the criteria in this paragraph if –

- (a) P is the child of an EEA national ("the EEA national parent");*
- (b) P resided in the United Kingdom at a time when the EEA national parent was residing in the United Kingdom as a worker; and*
- (c) P is in education in the United Kingdom and was in education there at a time when the EEA national parent was in the United Kingdom."*

6. The second error related to the judge failing to take into account relevant factors including the mental health difficulties of the appellant's daughter and his failure to identify the correct test in relation to derivative rights of a primary career coupled with the failure to properly assess the nature of the relationship gave rise to error. She further argued that the judge erred in identifying in [52] of her determination a requirement for children being continuously in education.

7. Perhaps it is best to set out at this stage the judge's full conclusions relating to reg.15A appearing in the final paragraph of her determination at [52]:

"I do not accept the claim that the appellant has acquired a derivative right of residence under Regulation 15A. Regulation 15A principally refers to children who are under Article 8. The appellant's children are now aged 25 and 23. There is no evidence of them continuously being in education. I am not satisfied that the appellant can be properly described as primary carer of a 25 year old young woman. Whilst she has been diagnosed with bipolar disorder she is not taking medication and is well enough to continue her studies. There is no evidence of the appellant's son living with her at

all. Having already taken a view as to her credibility I do not accept her excuse for his non-availability for the two hearings."

8. Miss Asanovic argued that the relationship between the appellant and daughter was close. Her daughter had been sectioned under the Mental Health Act in 2011. She drew my attention to the medical evidence adduced in support. This included a discharge from section under the 1983 Act dated 9 November 2011 and a letter from Dr Chaturvedi dated 17 August 2012 in these terms:

"The following report is based on medical records available to me. I have not carried out a medical examination for the purpose of this report.

Miss S has been diagnosed with bipolar affective disorder in October/ November 2011. She is known to have three manic episodes and a depressive episode in 2009 as noted in the letter from the Mental Health Team - Oxford dated 24 November 2011. She has been on olanzapine in past. She is on no medication at present."

9. The appellant's daughter had provided a statement in which she refers to her family history and her mental health difficulties. She explains that she was to have completed her degree at Oxford Brookes University by the summer of 2012 and this had been affected by her disorder. She refers to having been hospitalised after a manic episode in October 2011 and to her mother's love and support. She has not had any further episodes since then and believes this was because she had chosen to live with her mother and brother again. The stable environment was conducive to her mental stability and consequently better for her studies. Her mother takes care of her and her brother and helps them with the finances for their studies and provides them with all their support that they need. Miss Asanovic argued that this evidence was not considered by the judge in the determination in the summary of that evidence at [22] and [23].
10. Mr Ouseley argued the judge had made a decision open to her. He considered the judge had directed herself as to the [correct] test and the evidence of the appellant had not been that she needed to be here for her daughter. He acknowledged that another judge could have come to a different conclusion.
11. Discussion then turned to the history of the proceedings before the judge and whether the Secretary of State had addressed the derivative rights issue. It was explained that the hearing had been adjourned for this specific purpose and this had been addressed in an additional refusal letter dated 22 November 2012 resulting in a further immigration decision. Specifically in respect of reg.15A, the Secretary of State had this to say:

"In July 2012 the EEA Regulations were amended to incorporate the new Regulation 15A. New Regulation 15A confers a derivative right to reside on persons claiming a right to reside on the basis of the Court of Justice of the European Union (ECJ) judgments in the cases of *Ibrahim* (C130/08) and *Teixeira* (C480/08), where the relevant criteria are met.

In the cases of *Ibrahim* and *Teixeira*, the Immigration Judge rules that by virtue of Article 10 of Regulation 492/2011(i) the children of an EU citizen who works or has

worked in the host member state (who are in education in that state) and (ii) the primary carer of those children, can claim a right of residence in that State.

This right of residence is known as a free moment right and FM, but is a 'derivative right' which means that the recognition of this right by the United Kingdom is not equal to rights under Directive 2004/38/EC. A derivative right can only be issued up to when the child in question reaches 18 years old.

This ruling therefore does not apply in your case, as your children are both over 21 years old and a derivative right cannot be issued retrospectively. Additionally in order to qualify, it would have to be proved the children's EEA father had exercised treaty rights in the United Kingdom and there is no evidence to confirm this."

12. Mr Ouseley candidly acknowledged that this analysis did not seem to be right.
13. No new evidence had been served in response to the directions issued with the grant of permission to appeal in the event that error of law was found. Miss Asanovic explained that she wished to rely on a letter which she had been instructed had been handed by her client to her solicitors a few days ago. Mr Ouseley was content for that new evidence to be placed before me and a fax was promptly received which included letters from Dr Chaplain, a consultant psychiatrist at Oxford Health NHS Foundation Trust dated 25 February 2013 in which he refers to the appellant as her daughter's main carer. He confirms that she lives with her mother and that her mother needs to provide ongoing care for her to be able to manage her mental health and continue with her studies at Oxford Brookes University. Those care needs are further detailed in the letter.
14. The second letter is from Oxleas NHS Foundation Trust dated 28 February 2013 which confirms the events resulting in the appellant's daughter being sectioned in 2011. For his part following discussions with Miss Asanovic the day prior to the hearing Mr Ouseley has produced a bundle addressing the early history of dealing with the Home Office by the appellant and her husband. These reveal that in 2001 Johar & Company Solicitors were dealing with the immigration affairs of the appellant and her husband. On 1 November 2001 they informed the Home Office that the appellant's husband was not in employment in the United Kingdom but in employment in Italy. Reference is made to the two children attending schools in this country. A further letter from them dated 6 November provides more information including confirmation of employment from Casa de Cura Santa Chiara, evidence of transfer of funds from an account in Italy to one held with Halifax Plc in Covert and a wage slip of Dr M.
15. At the hearing on 3 April, I observed to the parties that in the event I found an error of law and proceeded to re-make the decision even if as appeared to be the case, the new medical evidence showed the significance of the role the appellant plays in her daughter's life, in order for her to be entitled to a derivative right of residence, the appellant would need to demonstrate that her husband had in the past worked in the United Kingdom. It is correct that he had been granted a residence permit. Miss Asanovic drew my attention to the Tribunal decision in *Samsam* (EEA: revocation and retained rights) Syria [2011] UKUT 00165 (IAC), in particular [29] which is in these terms:

“However, our conclusions on this topic do not decide the different question of the evidential value of possession of a residence permit when a person seeks to renew it or obtain permanent residence on the strength of it. It is plain that if the facts reveal that a person was not exercising Treaty rights then the assistance of a residence card cannot assist. It is not conclusive proof. It may, however be some evidence of past lawful status if there is some evidence to support the exercise of Treaty rights, nothing to contradict and the historic position can [no] longer be established with precision.”

16. The judge had not reached any settled conclusion whether Dr M had worked in the United Kingdom at all. Mr Ouseley scoured his files to see if there was any evidence of UK employment produced to the Secretary of State and the best he was able to find was a letter from a firm of medical locums identifying potential opportunity for Dr M. The only other evidence was the oral testimony of the appellant and her daughter. Having regard to his standard of proof I considered that more was required. Both parties invited me to give them a further opportunity to address this.
17. Miss Asanovic wanted to make enquiries of the locum firm and Mr Ouseley wished to undertake a more thorough examination of the extensive Home Office file. I decided to permit this and accordingly reserved my decision on whether the judge had made an error of law. In the event that I was satisfied she had, I would remake the decision based on the evidence before the First-tier Tribunal together with the medical evidence served at the hearing on and any further evidence in documentary form relating to Dr M’s employment provided that evidence was filed with the Upper Tribunal and served on the Secretary of State no later than 24 August. Likewise Mr Ouseley was directed to disclose any documents relating to this issue by no later than that date. The appeal would be restored for hearing confined to the issue whether the appellant's daughter is entitled to exercise the derived right of residence under reg.1612/78 and for her mother a derived right of residence as a consequence.
18. I now turn to my conclusions on whether the judge erred in law. It appears to me that she did not direct herself accurately with regard to the test which was to be applied. Having misdirected herself that the derivative rights incorporated in the 2012 amendments to the Regulations did not apply as the children were over 18 years old, she further directed herself at [52] that reg. 15A “principally referred to children who were under Article 8”. I am also satisfied that she failed to take into account the appellant's daughter’s evidence regarding the role her mother plays in her life and the way in which this enables her to continue with her studies.
19. The correct approach is that set out in *Teixeira* at [84] to [87].

“84. It must be examined, second, whether the fact that the rights the child derives from Article 12 of Reg. 1612/68 have thus been held to apply, without any condition as to age, to children who have reached the age of majority or are no longer dependent on the migrant worker means that a parent caring for an adult child can reside with that child in the host Member State until the completion of his or her education.

85. In paragraph 73 of *Baumbast and R*, the court held that the right of children of a migrant worker to pursue, under the best possible conditions, their education in

the host Member State would be infringed if the person who was the primary carer were not able to reside with the child in that Member State during the period of education.

86. Although children who have reached the age of majority are in principle assumed to be capable of meeting their own needs, the right of residence of a parent who cares for a child exercising the right to education in the host Member State may nevertheless extend beyond that age, if the child continues to need the presence and care of their parent in order to be able to pursue and complete his or her education. It is for the referring court to assess whether that is actually the case in the main proceedings."

20. I am satisfied that the challenge to the judge's factual findings are more than a disagreement as it is evident she did not take into account or there is no indication what weight she gave to the material evidence of the appellant's daughter of the need for her mother's continuing presence to assist her in her studies.

21. The decision of the judge is therefore set aside and is to be re-made.

22. I need little persuasion that having regard to the letter from Dr Chaplain the appellant's mother plays an important role in her daughter's life and that her presence is needed for her daughter to continue her studies. I quote from the second paragraph of his letter of 25 February 2013:

"Her mother, Mrs H, is her main carer. She lives with her mother and her mother needs to provide ongoing care for her to be able to manage her mental health and continue with her studies at Oxford Brookes University. This includes giving her support on a daily basis in order that she refrains from taking drugs and alcohol which have been major precipitators in her manic episodes. She also needs to ensure that she does not leave the house at night time, for example to go to clubs where she will be vulnerable from taking illegal substances and exploitation. She also needs to make sure that S eats on a regular basis and provides meals for her."

23. Compelling as this evidence may be, this is not enough. It needs to be established that the appellant's daughter commenced her studies whilst her father was working in the United Kingdom.

EVIDENCE GIVEN AT THE HEARING ON 30 AUGUST.

24. At the resumed hearing on 30 August I heard evidence from the appellant and a witness, Ms B and I was also asked to take into account further documentary evidence submitted by the appellant's solicitors with their letter of 20 August in determining the issue whether at any time during the appellant's daughter's presence in the United Kingdom, Dr M has worked. At the outset of the hearing Miss Asanovic reminded me of the Tribunal decision in *Ahmed (Amos; Zambrano reg 15A(3)(c) [2006] EEA Regs) [2013] UKUT 00089 (IAC)*, in particular paragraph 3 of the head note in these terms:

"Notwithstanding inability to satisfy new reg.15A(3)(c) of the Immigration (European Economic Area) Regulations 2006 as amended with effect from 16 July 2012, the parent of a child of an EEA national who has been employed in the UK when the child was

also residing here can have a derived right of residence under Article 12 of Regulation 1612/68 (now Article 10 of Regulation No. 492/2011) even though the EEA national parent is no longer a worker in the UK at the time the child commences education: see Case C-480/08 *Teixiera* [2010] EUECJ, 23 February 2010.”

25. The evidence provided earlier included correspondence from the Italian Consulate Manchester, the Home Office, Johar and Company, Firstline Locums. HD and Jobcentre Plus. In addition there is a company search on Shifa Medical Centre and statements of an account with Halifax in the names of the appellant and Dr M.
26. The evidence accompanying the letter from Turpin Miller of 20 August 2013 comprises –
 - (a) a statement by Ms B;
 - (b) a statement by AM (which states that she would not be available from 9 July – the statement is dated 9 June 2013 together with a copy of the particular page from her British passport;
 - (c) copy letters passing between the appellant’s solicitors and Shifa Medical Centre and Firstline Locums Limited of varying dates;
 - (d) copy of an e-mail from Leena Patel, Deputy Manager HRSS from the University Hospitals of Leicester NHS Trusts confirming that Dr M had not worked at the Trust.
27. The appellant did not rely on her first statement and adopted a supplementary statement which Miss Asanovic had taken from her following my direction during the lunch adjournment. In this she refers to the following matters –
 - (i) Dr M arrived in the UK in May 2001 and arranged a house into which the family moved into in July 2001;
 - (ii) he soon thereafter started working through an agency. He was not registered with the GMC and did not therefore do the work of a qualified doctor but that of a senior nurse. He had to study English in order to obtain full GMC registration on 25 January 2002 and thereafter he worked for “agencies”;
 - (iii) the appellant recalled the named of one agency as Locum. He worked mostly in Leicester, Manchester and London. She used to take him lunch sometimes when he worked in the Royal Leicester Infirmary. He was not employed by the NHS but worked through agencies;
 - (iv) the couple bought a house at the end of 2003. The mortgage would not have been paid had her husband not worked;
 - (v) the appellant gives details of the work that she had undertaken;
 - (vi) she was not fully familiar with Dr M’s financial arrangements. She did not know why he would have received payments by electronic transfer and later making cash deposits. He left the family home in April 2008 and the appellant

had to move in with her niece because she was unable to afford to pay the mortgage;

- (vii) the house was in Dr M's name and he sold it without consulting her.
- (viii) A large payment of just under £10,000 in the account resulted from the sale of two cars in Italy. Dr M had two bank accounts. As to why the bank account (evidence of which had been produced at the hearing) stopped around 17 November 2003 she believed he must have started using one of the other accounts more. He would give her cash which she used to operate the household billing.
- (ix) As to the explanation for instalments from an international ATM between September 2004 and June 2005, Dr M's sister who lived in Mogadishu needed a kidney transplant.
- (x) The appellant also knows that Dr M worked for a medical centre called Shifa because she had found a note with the centre's name amongst the few possessions which were left behind when he departed;
- (xi) the parties' divorce in Italy is not yet finalised. The appellant had tried to get documents through her Italian lawyer as to her husband's work history but he is refusing to co-operate. He has been underhand in his dealings with her;
- (xii) HD is in Mostar on a two year contract until 2013 (this person being the author of a letter dated 5 April 2013) who states that he had worked with Dr M between 2001 and 2003 when he moved to Leicester;
- (xiii) AM is in Egypt where her brother, the appellant's nephew was killed in the recent protests.

28. Under cross-examination the following matters emerged:

- (i) the appellant no longer had the note with Shifa Medical Centre's name explaining that it was a long time ago;
- (ii) the appellant was aware her husband had two accounts with her, a Halifax current account and a savings account to the United Kingdom. He had two further accounts with HSBC and Barclays in his name and in addition three accounts in Italy;
- (iii) she had no idea why the solicitors had written in November 2001 in the terms that they had;
- (iv) the appellant believed her husband had been paid electronically. She had never been to Shifa Medical Centre;
- (v) when the family first came to the United Kingdom they had to survive and he had to do a job even though he was over qualified. He was on night shift, however the appellant was unaware whether he had taken this employment under his own name. When she visited him at the Royal Infirmary in Leicester,

she did not know what name he had used and as to his identity card, he had a temporary “thing” with his initials, not his full name. She would bring him lunch once a week, sometimes two times.

29. Miss Asanovic had no re-examination, however I sought clarification on aspects of the evidence from which the following emerged:
 - (i) the appellant did not know whether Dr M did any work at the Royal Leicester Infirmary after his registration with the GMC. She was not aware whether he had done any hospital work at any location thereafter. After such registration he had worked with a local agency and there were “other agencies”. The local one would employ him a lot as a consultant. As to where this work was she was pretty sure it was at nursing homes in Manchester as she had answered calls coming through. She thought this could have been hospitals also;
 - (ii) the couple had ceased living together in April 2008;
 - (iii) the house had been purchased with a mortgage and that her husband had signed the papers for her. She guessed the mortgage had been from HSBC.
30. Mr Ouseley raised further questions for the appellant arising out of my questions. When it was put to the appellant that he had pretended to use her name, explanation was that the husband was afraid the property would be taken so he had told her he had signed it for her but she did not believe this to be the case as when he sold (the property) she had not been contacted. He had told her that he had put her name down. She trusted him; they had been married for 21 years.
31. Miss Asanovic obtained clarification that the appellant had visited her husband in Leicester (infirmary) at the end of 2001 and 2002 but she had not visited him after his GMC registration in 2002.
32. Ms B adopted a short statement explaining that she had known the appellant since 2001 and that they had met because a mutual friend had asked her if she would mind taking the children to school because she was new in the country and did not have any means of transport. She was aware that Dr M had worked for an agency as a doctor between 2001 and 2005. She knew this to be true because on several occasions she had given him a lift to the train station to attend work. It also paid the fees for his children’s tuition with her son.
33. Under cross-examination Ms B explained that Dr M told her where he was going when she gave him a lift. She explained that she was at the house and he had told her that he had to go to work and so she gave him a lift. Both Dr M and the appellant had told her of his work.
34. I sought clarification why she had been at the family house and Ms B explained that she used to help the family by taking the children to school and bringing them back. It was no hardship taking Dr M to the train station. She was not an employee and had just helped out. The petrol costs in taking the children to school were paid. As to the period of time over which she carried out this role she speculated this was

eighteen months to two years although then thought it may have been longer and had to stop in 2005 as her son had been taken ill.

SUBMISSIONS

35. I thereafter heard submissions. In summary Mr Ouseley argued that the evidence was vague and referred me to the documentation which indicated that Dr M had not worked in the United Kingdom and also argued that Dr M had not been generally honest. The evidence of the second witness was what Dr M had told her.
36. Miss Asanovic also made detailed submissions all of which I have taken into account in assessing the material before me. She sought to place emphasis on a letter from the Department of Work and Pensions recording employment and support allowance rates paid to the appellant dated 14 January 2012. Her initial contention was that these payments would not have been made available to the appellant had she not been here lawfully based on her husband's employment. There followed a detailed exchange of submissions on disclosure of the information which had been provided by the appellant in support of her benefits claim. After taking instructions Miss Asanovic indicated the appellant did not wish to rely on this evidence to support her contention that Dr M had worked in the United Kingdom.
37. I reserved my determination.

CONCLUSIONS

38. The parties have accepted that if the appellant is able to demonstrate that Dr M worked in the United Kingdom the appellant would succeed in her appeal based on her derived rights by virtue of her daughter continuing in education here at Oxford Brookes University until 2015 in the light of the need for her to be here having regard to her daughter's mental health difficulties. What should be a relatively straightforward task to obtain reliable confirmation of employment of someone who obtained registration in the United Kingdom as a doctor and who is said to have worked here regularly between 2002 (in that capacity) until 2008 thus resulting in a public profile has not proved possible. There is no confirmation of that employment from any of the employers it is claimed that he had been with. Contrary to the testimony of the appellant, the Royal Leicester Infirmary stated that he had had not worked for them. Even if he had obtained employment with the hospital through an agency, I consider it reasonably likely that there would have been an enduring record at the hospital of his individual presence. It is not disputed that the General Medical Council registered M, on 25 January 2002 as a medical practitioner with specialist registration reflected in a date of current entry from 9 November 2006 but that of itself is not enough to demonstrate that he took employment here as a doctor.
39. The letter from the Italian Consulate in Manchester dated 25 July 2002 is of no assistance since it does not confirm that Dr M had obtained employment before registration. The letter from Johar & Company of 1 November 2001 to the Home Office in response to an enquiry whether Dr M was exercising his treaty rights specifically states that he was not in employment in the United Kingdom but in employment in Italy. Their further letter of 6 November 2001 refers to enclosures

that include receipts for transfer of funds from an account in Italy to one held with the Halifax PLC in Coventry and a wage slip for Dr M. There follows this text:


“We would advise that the majority of these documents are in Italian as our client is more often than not working in Italy. He has funds set up in the United Kingdom and further documentary evidence of this shall be forwarded shortly”.

40. The statement of a joint account between Dr M and the appellant at Halifax Bank covers a date range of 6 July 2001 and 16 September 2009. There is a pattern in the earlier years of regular payments in of varying amounts by CHAPS payments with no indication of the source. Three are for the same amount of £988 on 24 July, 11 October and 2 November 2001. There was also a payment of £1,988 by CHAPS on 24 September 2001. These payments are interspersed with other varying amounts including for that year CHAPS payments on 14 August 2001 of £1,300 and on 28 November 2001 of £1,188 as well as a cash transaction on 11 July of £587.50. It has been reasonably open to the appellant since it is a joint account to obtain confirmation from the bank of the source of these funds.
41. A letter from Firstline Locums Limited dated 29 July 2002 does not confirm employment but explains that there are a number of positions that have come up but mainly Dr M's needs.
42. As to the witnesses who did not attend the hearing, AM explains enigmatically that Dr M was staying at her house whilst he was setting up the London Health Clinic. There was no mention by the appellant of her husband having undertaken such an activity. She refers to M having been self-employed and yet as reminded by Mr Ouseley, enquiries by the Secretary of State with HMRC did not result in any record of employment as observed by the First-tier Tribunal Judge in [8] of her determination. AM refers to Dr M working “during the period of 2001” in Leicester and during 2005 in London. There has been no previous mention of a London Health Clinic having been established. The statement is silent as to the time between 2001 and 2005 and the explanation that he was working that year is not reconcilable with the statements by the appellant's solicitors
43. The letter from HD explains that, “In my former capacity of Community Health Coordinator with PCT then with LPT of NHS trust I acquainted with Doctor M an Italian-Somali Doctor who is specialised in Internal Medicine, Cardiology and Emergency Medicine within the remit of bridging the gap of Somali community health needs project”(the actual text preserved). She also refers to having worked with Dr M between 2001 and 2003 and that he had worked for as Medical Staffing agency and, “used to travel for work inside Leicester and wherever he was sent by the agency.
44. This witness was unable to attend the hearing which limits the weight that can be given but the letter contains leads that could have been readily pursued to obtain confirmation from the PCT and NHS trust. It is significant that this has not been done and it is also significant that the community activity in the letter is not mentioned by the appellant.

45. As to the oral testimony, the appellant states that her husband worked and yet her evidence is curiously vague and short of the detail I would expect from somebody giving an account of their partner's activities. She is clearly an articulate person and it is difficult reconciling that with her weak evidence. Ms B' evidence does not take matters much further. I accept that she helped the family and took Dr M from time to time to the railway station. If this was for the purpose of him travelling to work she did not know where he had gone to or the precise nature of what he would be doing. Her evidence needs to be considered against the relative vagueness of that of the appellant.
46. The evidence must be taken in the round in deciding whether the appellant has demonstrated on the balance of probabilities that her husband has worked in the United Kingdom. I am unable to accept her own testimony and that of Ms B in the face of the evidence as analysed above. The statement of the joint bank account indicates a steady stream of varying credits to the account, however I am not satisfied that the source was employment in the United Kingdom. The evidence does not establish that Dr M worked in the United Kingdom before he left in April 2008 and it follows that the appellant is unable to succeed in her appeal.
47. The determination of the First-tier Tribunal Judge has been set aside. The re-making of the decision has been on the narrower basis than the case first advanced by Miss Asanovic. The appellant has failed to demonstrate on the balance of probabilities that the EEA national was working in the United Kingdom at any time prior to the appellant's daughter's education here or subsequently.
48. The appeal is dismissed.

Signed

Date 23 September 2013

A handwritten signature in blue ink, appearing to read 'Dawson', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Dawson