



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25064/2013

THE IMMIGRATION ACTS

Heard at Field House
On 2 June 2014

Determination Promulgated
On 2 June 2014

Before

Deputy Upper Tribunal Judge Pickup
Between

Mohana Ramachandran
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr N Paramjorthy, instructed by AP Solicitors
For the respondent: Mr G Saunders, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mohana Ramachandran, date of birth 30.8.53, is a citizen of Sri Lanka.
2. This is her appeal against the determination of First-tier Tribunal Judge Snape, who dismissed his appeal against the decision of the respondent, dated 30.5.13, to refuse her application made on 7.3.13 for an EEA residence card as confirmation of a right to reside permanently in the UK.
3. The application was made on the basis that the appellant was the non-EEA national family member of Suganniya Harthanakumar, a German national and the appellant's

daughter, who claimed to have exercised Treaty rights in the UK for a continuous period of 5 years, pursuant to regulation 15(1)(b) of the Immigration (EEA) Regulations 2006.

4. The Judge heard the appeal on 13.2.14.
5. First-tier Tribunal Judge Holmes granted permission to appeal on 10.4.14.
6. Thus the matter came before me on 2.6.14 as an appeal in the Upper Tribunal.

Error of Law

7. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Snape should be set aside.
8. In granting permission to appeal, Judge Holmes found it arguable “That the Judge misread the payslips that were before him; although there was no(t) a complete run of payslips the content of those that were in evidence showed that the sponsor had been in employment for a significant part (if not all) of the break in the continuity of the payslips or the earnings to date figure could not have been as it was. The judge also makes no reference in the Determination to the guidance on jobseekers to be found in Shabani [2013] UKUT 315. Accordingly it is arguable that the Judge’s finding that he was not satisfied the sponsor had been exercising treaty rights for the requisite five year period is unsafe, and not one that he could have reached on the evidence had he properly directed himself.”
9. There was no Rule 24 response from the Secretary of State.
10. The relevant background can be summarised as follows. The appellant first arrived in the UK on 26.11.07 and on 23.1.08 was issued with an EEA residence card as the family member of her daughter. It is claimed that her daughter worked for Tesco between 22.1.07 and 31.8.12. She was then a jobseeker, until she commenced employment with PMK Construction on 1.12.12.
11. There was a gap in the evidence of the Tesco payslips, between 8.7.11 and 23.12.11. The point is made that although there are missing payslips for those months, the earnings to date figure on the 23.12.11 payslip shows a figure of £5,042.79 when the figure for earnings to date on the 8.7.11 payslip was only £1,908.56. Thus the EEA national must have been earning a salary from Tesco during the period in 2011 for which there are missing payslips. It is not entirely clear but the judge may have accepted this point. However, the difficulty arises in relation to 2012.
12. The EEA national claims to have worked for Tesco until 31.8.12, but the last payslip produced is for 8.6.12, and thus there are two months missing for the claimed employment in 2012. That she remained employed by Tesco until 31.8.12 cannot be inferred in the same way as in respect of the period of missing wage slips in 2011.
13. The HMRC letter at page 8 of the appellant’ bundle, dated 3.10.12, indicates that the EEA national’s Jobseeker’s Allowance claim ended on 4.9.12. However, there is no

evidence as to when that claim commenced. In oral evidence Ms Mathanakumar stated that this document was inaccurate, as it did not refer to any income from employment for the financial year ending 5.4.12.

14. The EEA national stated that she commenced employment with PMK Construction on 1.12.12 and there are wage slips for the period December 2012 to February 2013. It follows that there are unexplained gaps between the end of the Jobseeker's Allowance claim on 4.9.12 and the commencement of employment with PMK Construction in December 2012.
15. At §15 of the determination, Judge Snape noted the respondent's representative submitted that there was no evidence that the EEA national was exercising Treaty rights in the UK between September and December 2012. Clearly that was the period of concern to the judge, as it fell within the five-year period relied on by the appellant.
16. At §22 the judge stated that from the evidence produced he was unable to conclude that the EEA national, the appellant's daughter, had worked continuously for Tesco during the period claimed. As stated above, the period claimed was 22.1.07 through to 31.8.12. There was no HMRC record of employment after 5.5.12. A HMRC document, dated 5.3.13, shows only employment to the close of the 2010/2011 tax year. It is curious that if the EEA national was employed until 31.8.12, she did not ask for the employment records for the 2011/2012 tax year.
17. Even if the judge did not accept the inference from the payslips there was continuous employment in 2011, which, as stated above, is unclear, it remains the case that there is no evidence of employment beyond 8.6.12 until 1.12.12. During that period the EEA national registered as a Jobseeker, but when she so registered is not clear. It is clear, as the judge noted at §21, that the claim ceased on 4.9.12, some months before the new employment started. These are breaks in the 5 year period relied on by the appellant.
18. In the circumstances, on the evidence available to him, the judge was entirely correct to conclude that the appellant's daughter continuously exercised Treaty rights in the UK for the necessary five-year period. The grounds for permission to appeal to the Upper Tribunal focused on the 2011 missing payslips, as did Judge Holmes in granting permission to appeal. The period between June and August 2012 and again between September and December 2012 have not been addressed. In the circumstances it was inevitable that the appeal would be dismissed.
19. I reviewed the relevant periods and documents with the representatives at the hearing before me. Mr Paramjorthy very fairly conceded that he could not prove continuous employment in 2012. It rather seems that the grounds of appeal and the grant of permission misunderstood the determination and the limited evidence before the First-tier Tribunal. The judge did not misread the documentary evidence.
20. The appellant claims that she can now prove the necessary continuous period of employment, but as that evidence was not before the First-tier Tribunal, it will be for the appellant to make a new application.

Conclusions:

21. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed:

Date: 2 June 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal was correctly dismissed in the First-tier Tribunal.



Signed:

Date: 2 June 2014

Deputy Upper Tribunal Judge Pickup