



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

Appeal Number: IA/29844/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17 July 2014

Determination

Promulgated

On 28th July 2014

Before

**THE HONOURABLE MR JUSTICE LEWIS
UPPER TRIBUNAL JUDGE MOULDEN**

Between

MR EDUART GJURA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Naz, a Solicitor

For the Respondent: Mr P Duffy, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal brought by Mr Eduart Gjura against a decision of the First-tier Tribunal promulgated on 26 February 2014. By that decision the Tribunal dismissed his appeal against the refusal of an application by Mr

Gjura for a permanent residence card under the provisions of the Immigration (European Economic Area) Regulations 2006.

2. The appeal can be dealt with very briefly in light of the very helpful concessions made by the Secretary of State. In brief, Mr Gjura is a national of Albania. He came to the United Kingdom on 2 April 2006. He met his now wife and they went to Albania in 2006 and they married in Albania. His wife is an Irish national who is exercising treaty rights in the United Kingdom and has been working here from about 2002.
3. Mr Gjura got a residence card in December 2006 and returned to the United Kingdom. He and his wife carried on their normal married life. They had two young daughters who also attended the Tribunal today, namely Leila and Sienna. Unfortunately Mrs Gjura became ill in about 2007 and at the very least is temporarily unable to work. There is an issue as to whether or not whether or not she will be able to resume work in the future.
4. The provisions of the Regulations are complex but in essence Regulation 15(1)(b) of the 2006 Regulations provide that 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 the Regulations for a continuous period of five years has a right to acquire permanent residence in the UK.
5. The Tribunal focused on the period from 2002 to 2007 when Mrs Gjura was working and because there had been a three month absence while she went to Albania to marry her husband the Tribunal found that that broke her residence and that she was not entitled to claim her over five year period.
6. Mr Duffy for the Secretary of State concedes that that is an error of law and that the Tribunal should have but did not consider the provisions in Regulation 3 governing continuity of residence and in particular paragraph 3(2) which provides that: "Continuity of residence is not affected by periods of absence from the United Kingdom which do not exceed six months in total in any year."
7. So firstly it is conceded, and we accept, that the Tribunal erred in law and we therefore set aside the determination of the First-tier Tribunal. That then means that we, the Upper Tribunal, need to remake the decision and to consider the appeal against the refusal of a right of permanent residence.
8. In our judgment it is clear that Mr Gjura does qualify for a right of permanent residence under paragraph 15(1)(b) of the 2006 Regulations. He is a family member of an EEA national. The EEA national is his wife, Mrs Gjura. He himself is the lawfully married husband of Mrs Gjura and he has resided in the United Kingdom for well over five years continuously as the husband of Mrs Gjura.

9. Insofar as Mrs Gjura has been temporarily unable to work it is clear from the provisions in Regulation 5 and Regulation 5(7) in particular that periods of inactivity due to illness shall be treated as periods of activity as a worker or self-employed person, as the case may be.
10. So the position is, it seems, that certainly from 2007 onwards Mrs Gjura has been here as a qualified person and as a worker, albeit somebody temporarily prevented to work, and indeed may well have been here from 2002 as a worker. In any event it is clear that Mr Gjura is entitled under paragraph 15(1)(b) to permanent residence in the United Kingdom. So we will therefore allow his appeal against the refusal by the Secretary of State saying that he was not entitled to permanent residence.
11. There is one other issue. There was also an appeal against the decision that removal would not breach Article 8. Ms Naz, who has appeared for Mr Gjura today, has helpfully indicated that they do not wish to pursue that aspect of the matter. Mr Gjura is concerned that he can stay in this country to support his wife and family as he has been doing for many years, and that has already been dealt with under the EEA Regulations and therefore we are content to accept the position of Mr Gjura that he does not wish to continue with the Article 8 in the light of the success with the claim under the European Economic Area Regulations 2006.

Signed

Date

Mr Justice Lewis