



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

Appeal Numbers: IA/03930/2015
IA/03940/2015
IA/03946/2015
IA/03947/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ROOVIKA KARUNAGARAN
KANESHAMANY KARUNAGARAN
KAMSHANA KARUNAGARAN
SAJANA KARUNAGARAN
(NO ANONYMITY ORDER MADE)**

Respondents

Representation

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer
For the Respondents: Ms Short, Counsel instructed by M&S Solicitors

DECISION AND REASONS

1. I was not asked, and saw no reason, to make an anonymity order.

2. The first respondent is a citizen of Germany born on 2 May 1983. The second respondent is her husband, who is a citizen of Sri Lanka. The other respondents are their children, who are citizens of Germany. In this decision I will refer to the respondents as “the claimants”.
3. The first claimant applied for a document certifying permanent residence as confirmation of a right to reside in the United Kingdom pursuant to Regulation 15(1)(a) of the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”) on the basis of having been employed for a continuous period of five years. On 9 January 2015 the application was refused by the appellant (hereinafter “the Secretary of State”) on the ground that the first claimant had failed to provide sufficient evidence showing how she had been exercising Treaty rights in the UK. At the same time, and for the same reasons, the Secretary of State refused to issue a permanent registration certificate to the first claimant’s children (the third and fourth claimants).
4. In addition, pursuant to Regulation 20(2), the Secretary of State revoked the Registration Certificate that had been issued to the first claimant on 6 November 2009 as confirmation of a right to reside in the UK. The letter setting out the reasons for revocation stated that there was no evidence of the first claimant exercising Treaty rights in the UK at present and she had stated she had been in employment from 18 November 2008 until 30 March 2012. The letter also stated that as an EEA national she was not required to leave the UK as a result of the decision.
5. The second claimant applied for a Permanent Residence Card on the basis of being a family member of the first claimant under Regulation 15(1)(b). On 9 January 2015, his application was refused on the basis that it could not be established that the first claimant had been exercising Treaty rights for the requisite five year period.

First tier Tribunal Decision

6. The claimants appealed and their appeal was heard by First-tier Tribunal Judge Andrew (“the judge”). The judge found that the first claimant had worked in the UK from 18 November 2008 until 30 March 2012 but not thereafter and although she had been unwell there was no evidence showing that she was temporarily unable to work because of illness or accident such that she satisfied the requirement of Regulation 6(2) of the 2006 Regulations. Having made this finding the judge concluded:

“I dismiss the appeal in respect of the Permanent Residence Card but allow the appeal against the revocation of the First Appellant’s Residence Card. The appeals of the other Appellants are dismissed/allowed in line”.
7. The grounds of appeal submit that the judge has failed to explain why, if the first claimant was no longer a “qualified person”, the revocation of her registration certificate was unlawful or the basis under which the other claimants qualify for residence cards.

Relevant law

8. The 2006 Regulations provide as follows:

6 - (1) In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

(2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

- (a) he is temporarily unable to work as the result of an illness or accident;

14 - (1) A qualified person is entitled to reside in the United Kingdom for so long as he remains a qualified person.

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;

20 - (2) The Secretary of State may revoke a registration certificate or a residence card or refuse to renew a residence card if the holder of the certificate or card has ceased to have a right to reside under these Regulations.

Submissions

9. Mr Tufan submitted that it was perplexing that the judge found the first claimant to not be exercising Treaty rights and that Regulation 15 was not satisfied but still allowed the appeal in respect of the revocation of the registration certificate. Regulation 20(2) allows for the revocation of a registration certificate or card in these circumstances and therefore there was a clear error of law.
10. Ms Short acknowledged that the judge’s decision was not adequately reasoned and did not dispute Mr Tufan’s comments about Regulation 20(2). She proceeded to argue that the judge had failed to take proper account of the ECJ’s judgment in *Chen*, which concerns the right of residence for a parent of an EEA child, and argued that the judge had

failed to address issues such as the second claimant's income, the position of the children and their schooling. She was of the view that the appeal should be remitted to the First-tier to be heard afresh.

11. Mr Tufan responded by noting that Chen was never raised by the claimants before the First Tier Tribunal and that there was no reason to prevent the decision being remade.

Consideration

12. For the reasons identified by Mr Tufan and recognised by Ms Short, I find there to be an error of law. The judge has allowed the first claimant's appeal against revocation of her residence certificate without providing any reasons. Moreover, the decision is inconsistent with his factual findings. Having found that the first claimant could not be considered a qualified person and having not made any other findings that would be consistent with the first claimant having a right to reside under the 2006 Regulations, it was not open to the judge to allow the appeal against revocation of the registration certificate given that Regulation 20(2) entitles the Secretary of State to make such a revocation where a person has ceased to have a right to reside under the 2006 Regulations.
13. I have considered the argument by Ms Short that the case should be remitted to the First-tier Tribunal because of inadequate fact finding by the judge but consider that the factual evidence before me is sufficient for the decision to be remade. My substituted decision is to dismiss the appeal on the basis that as the first claimant is not a qualified person under Regulation 6 she is not entitled to reside in the UK under Regulation 14(1) and the Secretary of State is entitled to revoke her registration certificate under Regulation 20(2).

Decision

14. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.
15. I remake the decision and dismiss the appeal.
16. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 9 October 2015