



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11492/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 12th January 2015

Decision & Reasons Promulgated
On 27th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MRS CATHY YAMANKO MIMBULU
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq, Solicitor

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mrs Cathy Yamanko Mimbulu, date of birth 25th April 1975 is a citizen of the Democratic Republic of the Congo.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking all the circumstances into account I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge I F Taylor promulgated on 25th June 2014. The judge dismissed the appeal of the Appellant against the decision of the Respondent dated 18th February 2014 to refuse the Appellant a permanent residence card as evidence that she was entitled to reside permanently in the United Kingdom as the spouse of an EEA national.
4. By permission granted on 18th July 2014 First-tier Tribunal Judge Kamara granted permission to appeal.
5. In essence the Appellant is seeking a permanent residence card as evidence of her right to permanently reside as the spouse of an EEA national exercising treaty rights. It has to be noted that she is married to a Mr Ilunga Mukuluoabo, who is a citizen of Belgium.
6. As set out in paragraph 4 of the determination it is not clear when the Appellant entered the United Kingdom, although it appears to be sometime prior to 2004. The judge found that the Appellant and her sponsor/ husband had been living together from 2004 onward, initially in a relationship akin to marriage but latterly as husband and wife. It was found that she married her Sponsor on 5th February 2008. The couple have three children the eldest of whom is now aged 6 or 7.
7. There is reference in the determination also to the fact that on 13th May 2013 the Appellant's EEA national partner made application for permanent residence cards both for himself and on behalf of the Appellant and their children. It appears that that application was refused on 11th October 2013.
8. The Appellant has been in a durable relationship with her Sponsor since 2004. In 2008 the parties married. The issue appears to be whether or not the Sponsor was in point of fact a qualified person during that period of time.
9. As part of the letter of refusal, dated 18th February 2014, issue was taken as to whether or not the Sponsor had in point of fact been a student from 2007 until 2011. The judge made a clear finding with regard to the issue in paragraph 11 of the determination. Having looked at the documentation including the EEA national's attendance at the University of Bolton the judge was satisfied that the Sponsor, the EEA national, had been attending at the University of Bolton from 18th January 2007 through to 25th June 2010.
10. It was thereafter accepted that the EEA national Sponsor had gone on to seek to study an MSc at the University of Birmingham. That course commenced in the September 2010 and was supposedly to be completed in 2011.
11. The judge accepted that the Appellant was a full-time student up and until 10th October 2011. No issue was taken with regard to the Sponsor being a qualified student under the Regulations. Whilst there may have been an issue as to whether he had private medical insurance to cover him for the relevant period of time that issue was not pursued. Indeed within the letter of refusal it was acknowledged that the Sponsor was issued with a registration certificate as a student and it was accepted

in the letter that given all the circumstances no comprehensive medical insurance was required. It appears that that registration certificate was issued in June 2008 after the Sponsor had been a qualified student from January 2007.

12. The argument therefore before me was whether or not the Appellant as the spouse of a qualified person was entitled to a permanent residence card by reason of her period of residence from January 2007 through to January 2012. The period that her husband was a qualified student under the Regulations was from January 2007 through to 10th October 2011. There is therefore a period of about three months after the Masters degree at Birmingham was complete when the Sponsor was no longer a student.
13. However the picture thereafter appears to be that post-October through to the period of December 2013 there were periods when the Sponsor was receiving jobseekers allowance, periods when he was working as a cleaner and periods when he was working on a voluntary basis. However for the three months between October 2011 and January 2012 he appears to have been claiming jobseekers allowance.
14. As noted within paragraph 12 a person is entitled under Regulation (7) to the status of a jobseeker for a period of six months only. However that would cover the initial three month period when the Sponsor ceased his university degree.
15. Accordingly it is the Appellant's contention that for the period from January 2007 through to January 2012 she was the family member of a qualified person and as such she should be entitled to a permanent right of residence.
16. The finding by the judge that a continuous period of five years with the end date either being 5th December 2013 the date of the application or the date of the hearing ignores the fact that the Appellant had already acquired a permanent right of residence.
17. It has to be noted that this makes no difference to the current position of the Appellant. The Appellant would presently be entitled to a residence card as the spouse of an EEA qualified person. The sole issue is whether or not she is entitled to a permanent residence card. The right to reside in the United Kingdom would exist whether it be a residence card or a permanent residence card. Clearly certain benefits accrue to a person that has a permanent residence card. However it would not effect immediately the right of the Appellant to reside. The Sponsor is currently working or self-employed such that he would be a qualified person and the Appellant would therefore be entitled to a residence card by reason of that.
18. The issue being whether or not the Appellant has already acquired a permanent right of residence. It is clear that the Sponsor was a qualified person from January 2007 through to January 2012 and by reason thereof the Appellant had already acquired the right of residence by January 2012. The judge in considering this matter limited himself merely to considering the period through to December 2013 or the date of hearing. Given the circumstances that the Appellant's Sponsor was at that stage continuing to seek jobseekers allowance the judge concluded that he was not

satisfied that the Appellant had had a continuous period of five years during which the Sponsor was a qualified person.

19. However having examined the facts as presented to the judge there was the period through to January 2012 by which time the Sponsor had been a qualified person exercising treaty rights and therefore the Appellant as a spouse of a qualified person had acquired a permanent right of residence already.
20. For the reasons set out I find that the judge has made a material error of law. I find that the Appellant has acquired a permanent right of residence. That being for the period of January 2007 through to the period of January 2012. Accordingly there is a material error of law and I substitute a decision allowing the appeal.

Notice of Decision

21. There is a material error of law in the original determination and I substitute the following decision:-

I allow the appeal under the EEA Regulations.

22. No anonymity direction is made.
23. Taking all the circumstances into account I make no fee award

Signed

Date **12th January 2015**

Deputy Upper Tribunal Judge McClure