



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

Appeal Number: DA/00313/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2018**

**Decision & Reasons Promulgated
On 21 March 2018**

Before

**THE HON. LORD BOYD
UPPER TRIBUNAL JUDGE JORDAN**

Between

**MISS ANNA [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Duffy, Home Officer Presenting Officer

For the Respondent: Mr Y. Vanderman, Counsel instructed by The Aire Centre

DECISION AND REASONS

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Parkes promulgated on 17 October 2017 in which he

allowed the appeal of Miss [A]. We shall refer to Miss [A] as 'the appellant' as she was in the First-tier Tribunal.

2. The appeal was governed by the Immigration (European Economic Area) Regulations 2016, and those required a two-fold approach to be adopted. First, the Judge was to consider what was the appropriate test as far as this appellant was concerned and whether or not she had acquired a permanent right of residence such that she could only be removed on serious grounds of public policy or public security. Second, her conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Both of those elements had to be established. The Judge found that they were.
3. Paragraphs 8 and 9 of the determination contain a finding that the appellant had acquired a permanent right of residence:

“Although the appellant entered the UK in 2007 it appears towards the end of that year and as noted it is not claimed that she had resided in the United Kingdom for ten years before being sent to prison. The evidence of her having worked in the United Kingdom is limited. This is explained by her having lost much of the paperwork following her fleeing an abusive relationship. There is evidence for that in the appellant’s bundle from victim support at page 79 and the following pages. That said, she left that partner in 2013 and could have approached her previous employers for supporting letters if not copies of wage slips and the like although I appreciate it is only since her conviction that this has become an issue and her funds have been limited as she has indicated.

The account that the Appellant has given about her work history in the UK has been consistent throughout the various letters and her witness statement. The documentation that relates to the Appellant’s working in the UK is in the Appellant’s bundle at pages 56 to 77. Whilst not a seamless continuity the records cover at least part of every year since 2008. ... Her working for Titan Telecom is supported by documents and the evidence of her friend. I find that the Appellant has shown that she has exercised treaty rights in the UK for more than 5 years and so is entitled to the higher level of protection afforded by the EEA Regulations 2016.”

4. That is challenged in the grounds of appeal by the Secretary of State where it is said that the appellant was required to demonstrate that she has been a qualified person for a continuous five year period since Bulgaria acceded the European Union in 2007. In our judgement that was a finding of fact that was open to the Judge by reference to the documentation that was found at pages 56 to 77. It is impossible, normally, for an individual to produce proof of working that is truly continuous working. Instead what is normally required is a mixture of documentary evidence, the evidence of the appellant, her friends and relatives and other evidence relating to presence in the United Kingdom which shows a pattern of her having been exercising Treaty rights throughout that period. Clearly if there had been evidence that she had

been in receipt of state benefits, that would have countered any such suggestion. There was none. Instead there was a fragmentary, or as the Judge described, '*not seamless*' production of material. That was the basis upon which the Judge determined that she had established that requirement.

5. However, the grounds in our judgement are limited to a challenge to the question of whether she had a permanent right of residence.
6. It certainly appears that paragraphs 1 to 4 of the grounds are directly related to the question of whether she has the enhanced level of protection as a result of her having acquired a permanent right of residence and then we notice that the concluding words of paragraph 6 also revert to alleging that the decision of the First-tier Tribunal Judge was deficient insofar as the appellant had failed to prove that she was exercising Treaty rights as a qualified person for a continuous five year period. On that basis it is only the permanent right of residence point which is challenged.
7. This fails however to take into account whether or not the appellant represented a genuine, present and sufficiently serious threat. The Judge dealt with this partly in paragraph 16 where he refers to the fact that it is not alleged that the appellant failed to comply with the terms of her release or that she committed further offences. The *conviction* remained a one-off and, although the facts behind it reveal a longer period of offending, there has been no repeat. Accordingly the conclusion that the Judge ultimately reached to the effect that she does not represent a genuine, present and sufficiently serious threat was one that was open to him and which is not challenged in the grounds of appeal.
8. In those circumstances it is our view that the Secretary of State's grounds of challenge must fail and the Judge reached a decision which was open to him to make on the material that was before him.

DECISION

- (i) The appeal of the Secretary of State is dismissed.
- (ii) The decision of the First-tier Tribunal allowing the appeal of Miss [A] shall stand.

Date: 21st March 2018

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL