



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

Appeal Number: EA/03045/2016

THE IMMIGRATION ACTS

Heard at Newport

8 November 2018

**Decision & Reasons
Promulgated
26 November 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

MONTA UDINE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of Latvia. She appeals with permission to this Tribunal against the decision of Judge Fowell in the First-tier Tribunal dismissing her appeal against the decision of the respondent on 24 February 2016 refusing her application for a residence card confirming a permanent right of residence in the United Kingdom.
2. At the hearing before Judge Fowell the appellant's husband, also a national of Latvia, appealed against a similar decision. In his case Judge Fowell

allowed the appeal, because although the full facts became apparent only at the hearing, the evidence then produced was clearly sufficient to show that he had, at the date of the decision, been residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) ('the Regulations') for a continuous period of five years: he has been for the whole of the relevant period in employment as an NHS doctor. The appellant's position is, however, as Judge Fowell said, less straightforward.

3. A certain amount of confusion may have arisen from assumptions that the appellant's status as a national of a Member State herself, rather than merely the wife of one, had been ignored. It does not appear to us that that particular factor has any bearing on the case. The permanent right of residence is acquired by an EEA national, like the appellant, in the circumstances prescribed by art 16.1 of the Citizens Directive 2004/38/EC, as transposed into the Regulations at reg 15(1)(a), which are that she 'has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years'. "In accordance with these Regulations" means, in effect, that for the whole of a continuous period of five years she would need to show that her presence and activity in the United Kingdom was permitted by the Citizens Directive or the Regulations.
4. The history is not in any serious doubt. The appellant and her husband have been in a relationship together for a considerable time. They came together to the United Kingdom in 2010. The appellant's husband came to work and as we have said has been doing so ever since. The appellant came as a student: she first studied at Southampton Solent University and undertook a course there which ended in about November 2013. She then trained with a view to offering beauty therapy on a self-employed basis. The training ended in February 2014, and she then registered as self-employed for tax purposes. There is evidence of her pursuing that activity in the two following tax years at least. On 28 August 2015 she and her husband were married. She is now again a student, and also of course the wife of her EEA national husband (who accompanied her to the hearing).
5. The problem is that that history does not, as the judge noted, show any continuous period of five years of presence in accordance with the Regulations. That is because there is and was no evidence of the actual pursuit of the self-employed activity during the tax year 2013-4. She stopped being a student in November 2013; but even if her subsequent training were to be regarded as being a student that itself finished in February 2014, and there was apparently no self-employed tax return for the year. Thus the appellant's actual (as distinct from desired, hoped-for or fully-trained for) activity in the period from February to the end of the tax year is not established, and it follows that the evidence does not establish that for that period she was residing in accordance with the Regulations. That period prevents any continuous period of five years lawful residence between 2010 and the present from being established. She began with a period as a student, and in more recent years has

qualified as a self-employed person, a spouse and a student, but in between there is a gap.

6. For these reasons, as we attempted to explain at the hearing, the present appeal cannot succeed. The appellant's presence in the United Kingdom now is clearly lawful, and she is well on the way to establishing a continuous period of five years residence in accordance with the Regulations, but had not done so at the date of the decision against which she appeals, and has not done so yet.
7. For these reasons we dismiss the appeal to this Tribunal and affirm Judge Fowell's decision.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 13 November 2018.