



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03154/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 29th June 2018

Decision & Reasons Promulgated
On 23rd August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MS MONIKA MARIE-LUISE STENNEKEN
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Miss A Hasimi, Solicitor from Freeths LLP.

For the respondent: Mr. Bates, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a German national born on 13 May 1948. She applied on 5 January 2017 for confirmation that she had acquired a right of permanent residence in the United Kingdom by virtue of European Treaty provisions. This was on the basis she had resided in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016

(hereinafter referred to as a 2016 regulations) for a continuous period of 5 years.

2. Her application was rejected on the basis she had not provided evidence that she had resided in accordance with the regulations the necessary 5 years.
3. Her appeal was heard by First-tier Tribunal Judge Saffer in Bradford on 1 September 2017 and in a decision promulgated on 8 September 2017 was dismissed. The appellant had not attended the appeal though there was a presenting officer in attendance.
4. The judge referred to the refusal letter which stated the appellant had provided proof of employment in a residential home from 1 November 2007 to 5 June 2010. After that the appellant said she had taken early retirement. At that stage she had reached the applicable age then in force for a State pension. The refusal referred to the absence of evidence of this retirement or of pension payments.
5. In the decision the judge referred to having proof of pension payments from June 2011 as well as work done as a bookkeeper. However the appeal failed because there was no evidence she had comprehensive sickness insurance cover and consequently did not come within the definition of a self-sufficient person.
6. The judge referred to the 2006 regulations rather than the applicable 2016 regulations. Permission to appeal was granted on the basis the judge should have considered regulation 15 (1)(a) and (c) and that the application was not based on self-sufficiency.
7. Mr Bates accepted that First-tier Judge Saffer was in error at paragraphs 9 and 10 of the decision. The judge had accepted that after the appellant's retirement she continued to work as a bookkeeper and continued to do so. The judge accepted the work was real and not marginal or subsidiary and she had done this since 2009. Consequently, she had exercised Treaty rights as a worker for 5 years. It was also accepted in the alternative she could have succeeded under regulation 15 c as a worker who had cease activity when she took retirement.
8. My conclusion is that the decision of First-tier Judge Saffer materially errs in law in only considering her application under the self-sufficiency provisions. In fact on the judge's findings she had established 5 years as a worker at the date of hearing. In the alternative, she could have succeeded under regulation 15 (c) as a worker who had cease activity.

9. As there was no dispute between the parties I remake the decision and allow the appeal. The appellant is entitled to the confirmation of permanent residence she seeks.

Decision

The decision of First-tier Tribunal Judge Saffer materially errs in law and is set aside. I remake the decision allowing the appeal and find the appellant is entitled to confirmation of a right of permanent residence under European Treaty provisions

Francis J Farrelly

Deputy Upper Tribunal Judge

Fees and costs

Miss A Hasimi has asked for a fee award as well as a wasted costs order. Regarding the fee application Mr Bates said the information provided with the application of employment was scant and the information about her work as a bookkeeper was provided later. Miss A Hasimi had said the appellant applied on the basis she had ceased activity and she had demonstrated she met regulation 15 (1)(c).

I would make a whole fee award on the basis the appellant has succeeded in her appeal. I acknowledge that all the evidence in relation to 5 years employment was not before the decision maker. However, the decision could have been allowed under the retirement provisions. It was clear from the application this was the basis upon which it was being made.

In terms of wasted costs, such an order should only be made in the clearest of cases which I do not find his situation here. The power to make such an order only arises to the extent that the First-tier Tribunal had the power to make such an order. I do not find it established that the decision maker acted improperly, unreasonably or negligently particularly as the evidence provided with the application was limited and there has been nothing about the conduct of the appeal proceedings that could justify any such order.

Francis J Farrelly

Deputy Upper Tribunal Judge