



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

Appeal Numbers: EA/04513/2017  
EA/04514/2017

**THE IMMIGRATION ACTS**

**Heard at : UT(IAC) Royal Courts of Decision & Reasons  
Justice Promulgated  
On : 19 November 2018 On : 29 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**JIL [M]  
HASHUM [S]**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Gherman, instructed by Morgan Pearse Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants, nationals of the Netherlands, are mother and son born on 14 June 1964 and 18 March 1991 respectively. They claim to have entered the UK on 14 April 2006.
2. On 27 April 2011 the first appellant applied for a Registration Certificate and included the second appellant in her application as her dependant. On 22

June 2011 the appellants were issued with Registration Certificates. On 18 November 2016 the first appellant applied for permanent residence, with her son included in her application as her dependant.

3. The appellants' applications were refused by the respondent on 21 April 2017 under the EEA Regulations 2016. With regard to the first appellant, the respondent considered that she had not provided adequate evidence to show that she was a qualified person as either a worker, a self-employed person, a student, a jobseeker, or a self-sufficient person in the UK for a continuous five-year period. When she was issued with a Registration Certificate in 2011 it was accepted that she was exercising her treaty rights as a job seeker with the Jobcentre plus. However in the current application she had stated that she was a ceased worker who could not return to work on the basis of being personally incapacitated since October 2006 as she cared for her disabled son. It was not accepted that she met the requirements as a ceased worker as she had not resided in the UK for two years prior to her incapacity, she had worked for less than 12 months prior to ceasing activity and she had failed to demonstrate that she was incapacitated as the result of an accident at work or an occupational disease that entitled her to a pension payable in full or in part by an institution in the UK. The respondent then assessed the appellant's application on the basis that she was self-sufficient under regulation 15(1)(a) with reference to regulation 6 and 4 but considered that she could not meet the requirements on that basis as she had not provided evidence that she and her son had had comprehensive sickness insurance for five years, her bank account statement did not show that she had sufficient resources to support herself and her son so that she was not a burden on the state, her bank account statements showed transactions relating to the receipt of public funds and she had provided evidence from DWP that she was in receipt of public funds.

4. The respondent also considered whether the first appellant could be issued with a Registration Certificate in line with the second appellant as a student, but there was insufficient evidence of the exercise of treaty rights for five years and no evidence of comprehensive sickness insurance. There was no evidence that the first appellant was dependent upon the second appellant and the contrary was stated. The second appellant was in education and the evidence demonstrated that he was not permanently incapacitated to the point that he could never work. The respondent also considered the appellant's application under derivative rights but there was insufficient evidence that she would qualify and she could not claim permanent residence from derivative rights.

5. With regard to the second appellant the respondent considered that he had failed to provide evidence that he had resided in the UK in accordance with the Regulations for a continuous period of five years.

6. The appellants' appeal against the Respondent's decisions was heard by First-tier Tribunal Judge Talbot. The evidence before the judge was that the first appellant had worked as a cleaner from April to September 2006 and had then become a jobseeker for five years until 2011. She then started receiving income support. She had not worked or been a jobseeker since then. Her son,

the second appellant, was severely disabled. He suffered from Erb's Palsy, epilepsy and learning difficulties and required full-time care which she provided. He was in receipt of Disability Living Allowance and the first appellant had been receiving Carers Allowance since June 2008. There was no-one else who could care for the second appellant and the first appellant cared for him as her full-time job. It was submitted on behalf of the first appellant that she should be regarded as a "worker" under the EEA Regulations in view of her occupation as a full-time carer for her son for which she received remuneration in the form of her Carers Allowance. The appellant relied on the cases of Lawrie-Blum v Land Baden-Wuerttemberg, [1986] EUECJ R-66/85, D.M. Levin v Staatssecretaris van Justitie, [1982] EUECJ R-53/81, R. H. Kempf v Staatssecretaris van Justitie, [1986] EUECJ R-139/85 and Kurz (ne Yuce) (External relations) [2002] EUECJ C-188/00 in that regard, whilst the respondent argued that the first appellant received a benefit and not a salary or wage.

7. Judge Talbot found that the interpretations provided by the ECJ in those cases were not analogous to the interpretation the appellant's representative was inviting him to give in the appellant's case. He did not accept that the first appellant was a worker for the purposes of the EEA Regulations and he dismissed the appeals.

8. The appellants sought permission to appeal against the decision. The grounds asserted that the judge had had only scant regard to the case law cited in the skeleton argument and had failed to give adequate reasons for his conclusions. He had not stated whether or not he found the role of being a full-time carer in receipt of Carers Allowance as constituting "genuine and effective work" and had contradicted himself by referring to the value of the first appellant's work. He had not clarified whether he found that the first appellant met the first stage of the test in Lawrie-Blum for being a worker and if not, why not. He had not stated why there was no direct supervision by the State. He had not given reasons why the funds the first appellant received did not amount to remuneration. The grounds asserted that the judge had failed to engage with the legal submissions made and had failed to give reasons for his findings.

9. Permission was granted by the First-tier Tribunal Judge Buchanan on 10 October 2018.

10. At the hearing Ms Gherman relied on the grounds of appeal and submitted that the judge had failed to engage with the substantial arguments made at the hearing and had failed to explain why he did not agree with those arguments. Mr Lindsay submitted that the judge had considered the case law relied upon by the appellant but had found that it was not analogous to the first appellant's situation. He had given adequate reasons for his conclusion, but even if his reasoning was inadequate that was immaterial as the judge's conclusions were right. It could not be said that receipt of Carers Allowance was remuneration whilst receipt of other benefits such as job seekers allowance was not. Mr Lindsay referred to the cases relied upon by the appellant and submitted that none of them assisted her.

## Consideration and discussion

11. Contrary to Ms Gherman's submission, it seems to me that the judge's decision, albeit concise, took account of all the arguments made, included consideration of the case law relied upon and provided proper reasons for rejecting the appellants' arguments.

12. At [13] the judge had regard to the test set out in Lawrie-Blum, which he set out in full, noting the particular context of that case. Ms Gherman set the test out at [9] of her grounds seeking permission, namely that an individual can be classed as a worker if they are engaged in (a) genuine and effective work; (b) under the direction of another; and (c) in return for remuneration. The judge considered each limb of the test.

13. With regard to "effective and genuine" work, the judge considered the case of D.M. Levin v Staatssecretaris van Justitie. [1982] EUECJ R-53/81 and other cases following a similar reasoning and concluded that the interpretations provided by the ECJ for "work" in those cases was not analogous to the appellant's situation. Ms Gherman's grounds asserted that the judge contradicted himself by referring at [14] to the value of the first appellant's work, but I do not consider there to be any contradiction. The judge meant no more than that the importance of the first appellant's care should not be underestimated. That was not inconsistent with a conclusion that the work was not genuine and effective for the purposes of the EU jurisprudence. As the judge rightly observed, the reasoning of the Court in D.M. Levin, which Ms Gherman relied upon in her skeleton argument at [9], that income lower than the minimum required for subsistence may still be classed as work if it was genuine and effective, was not particularly relevant to the issue in the appellant's case. Likewise, the case of Kempf was also about the level of income, concluding that the fact that the applicant claimed financial assistance payable out of the public funds of the state in order to supplement the income he received did not exclude him from the provisions of community law relating to freedom of movement for workers. As Mr Lindsay submitted, there was no suggestion in Kempf, however, that receipt of benefits could be classed as "work" and therefore again that case was not particularly relevant to the appellant's circumstances. Accordingly the judge was perfectly entitled to conclude that none of the cases relied upon by Ms Gherman were analogous to the appellant's situation. Indeed, as Mr Lindsay submitted, the case of Barry v London Borough of Southwark [2008] EWCA Civ 1440 undermined rather than supported the appellant's case in its reference to work being subsidiary or ancillary, and thus not of genuine economic value, if done pursuant to some other relationship between the parties which was not an employment relationship. Mr Lindsay's submission was that since the relationship between the parties was mother and son, it was not an employment relationship and the 'work' was therefore not of genuine economic value. That was clearly consistent with the judge's findings.

14. In regard to the second limb, the judge considered at [14] that the first appellant was not working under the direction or supervision of the state providing the benefit and that the person receiving the first appellant's


services, namely the second appellant, was not providing the money she received. Ms Gherman's submission was that that was not the case and that the first appellant was working under the direction of the state. In support of her argument she relied, in her skeleton argument before the First-tier Tribunal, upon the case of Kurz at [46]. Whilst the judge did not specifically refer to that case, it is clear to me that once again the circumstances in that case were entirely different. The reference at [46] of Kurz to public funds received for work undertaken was not a reference to state benefits, as in the appellant's case, but to the funds received by the applicant in the case of Birden (External relations) [1998] EUECJ C-1/97, for undertaking public utility work. That is also relevant to the third limb of the test in Lawrie-Blum in relation to the question of remuneration, which Ms Gherman submitted was satisfied by the receipt of Carers Allowance. Judge Talbot, at [14] of his decision, considered that the first appellant was not receiving remuneration but was receiving a benefit from the state as a means of social assistance. I find nothing in the case law cited by Ms Gherman to undermine such a conclusion and it seems to me that the judge was perfectly entitled to conclude as he did.

15. In the circumstances I find no merit in the grounds of challenge. The judge had regard to all the matters relied upon by the appellants and provided reasons for rejecting the arguments made. In so far as his findings were concise and did not specifically refer to all the arguments made by Ms Gherman, I find that nothing material arises from this, as Mr Lindsay submitted, since the appellant could not succeed in any event. I find no support from the EU jurisprudence for the claim that the first appellant's care for the second appellant and the receipt of Carers Allowance fell within the three-stage test set out in Lawrie-Blum and amounted to "work" for the purposes of the EEA Regulations, even on the broad interpretation advocated in that jurisprudence (Kempf at [13]). That was the only basis upon which it was argued that the Applicant was a qualified person under the EEA Regulations

16. Accordingly the judge was entitled to conclude that the appellants could not meet the requirements of the EEA Regulations for entitlement to permanent residence and made no errors of law in his decision in concluding as such. I therefore uphold the judge's decision.

## **DECISION**

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed:   
Upper Tribunal Judge Kebede  
November 2018

Dated: 23