



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05596/2017

THE IMMIGRATION ACTS

Heard at Field House
On 17 May 2018

Decision & Reasons Promulgated
On 29 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

ELIANA CORDELIA DE CAIRES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.
For the Respondent: Mr E Tufan, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the respondent's decision of 15 June 2017 refusing her application for permanent residence as the spouse of an EEA national exercising treaty rights in the UK.

Background

2. The appellant is a citizen of Brazil, born on 11 June 1982. She first entered the UK on 21 September 2011 following her marriage by proxy on 16 July 2011 to her husband, a Spanish citizen, living in the UK. On 12 January 2017 she applied for a permanent residence card as the family member of an EEA national, but her application was refused because she failed to provide evidence to show that her husband had been exercising treaty rights in the UK for a continuous period of five years. She produced an annual tax summary for the year ending 2016 and a letter from her husband's employer confirming that he had been employed since 9 May 2016, but she failed to provide any further evidence of his employment such as P60s, pay-slips or employers' letters for the years 2011 to 2015.

The Grounds of Appeal

3. In her grounds of appeal to the First-tier Tribunal, the appellant said that when making her application, she had misinterpreted what evidence was necessary to prove that her husband had been exercising treaty rights continuously and that she could provide further evidence including P60s.
4. She asked for her appeal to be determined without a hearing and on 6 September 2017 her appeal was decided accordingly. The judge referred to the fact that the appellant had said that she could provide further evidence and that further P60's would be attached but no further evidence had been provided to him. In these circumstances, he was not satisfied that it was shown that her husband had been exercising treaty rights for a continuous period of five years and her appeal was dismissed.
5. In her grounds of appeal against this decision the appellant said that she had in fact submitted evidence which had been sent by email to the address given by the Tribunal. Permission to appeal was granted on the basis that the grounds disclosed an arguable error of procedural unfairness.

The Error of Law

6. At the hearing before me the appellant confirmed that she had submitted P60s for the years 2011-2017 and this is confirmed by her email dated 19 June 2017 which is on the appeal file with the relevant P60s. However, it does appear that these documents had not been linked to the file before it went to the judge for him to decide the appeal.
7. Mr Tufan accepted that there had been a procedural irregularity, that the decision should be set aside and that the P60s confirmed that the appellant's husband had been in employment from 2012 to 2017. His earnings in this period have been from between £16,409.96 rising by 2016 to £20,343.86. There is no reason to believe that the

P60s are anything other than genuine and, in the light of this evidence, I am satisfied that the appellant has shown that her husband has been exercising treaty rights continuously in the UK for a period of five years and that she meets the requirements for a permanent residence card.

Decision

8. The First-tier Tribunal erred in law as there was an inadvertent procedural irregularity. The decision is set aside. I re-make the decision by allowing the appeal against the refusal of a permanent residence card.

Signed: H J E Latter

Dated: 24 May 2018

Deputy Upper Tribunal Judge Latter