



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

Appeal Number: IA/27671/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
on 11 July 2013**

**Determination
promulgated
On 17 July 2013**
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DAMEI LI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss R McGinley, of Gray & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By letter dated 15 November 2012 the respondent refused the appellant's application for a residence card, for lack of evidence that her EEA national husband was exercising treaty rights as a worker in the UK during a particular part of the relevant period, from November 2007 to 2009.

2. First-tier Tribunal Judge Balloch dismissed the appellant's appeal by determination promulgated on 10 April 2013, giving similar reasons.
3. The issue raised by the application for and grant of permission is whether the judge overlooked that there was before her evidence which had not been before the respondent to establish that the appellant's husband was working (both in employment, and in self-employment) during the period in issue.
4. Mr Mullen firstly submitted that tax credit assessments for the relevant time were based on the total income of both husband and wife, without differentiation, and so even if the judge should have taken them into account, they did not necessarily show that the husband was working at all. However, it emerged that on turning the pages of the assessment the income was all the husband's.
5. The judge appears to have overlooked that the evidence before her was more extensive than before the respondent. It is not disputed that the appellant was entitled to bring further evidence and that she could succeed on appeal, even if her application was rightly refused by the respondent on the information originally supplied.
6. The evidence of earnings week by week is not 100% complete, but given the lapse of time and changes in the work carried out by the appellant's husband that is unsurprising. As a whole, the evidence shows it to be much more likely than not that the appellant's husband was residing in the UK in accordance with the regulations (as a worker) throughout the 5 year period required by the regulations.
7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside. The decision is remade by allowing the appeal, as originally brought to the First-tier Tribunal.
8. No order for anonymity has been requested or made.



17 July 2013
Judge of the Upper Tribunal