



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

Appeal Number: IA/33922/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23<sup>rd</sup> June 2014**

**Determination**

**Promulgated**

**On 23<sup>rd</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Ms Estera Grazyna Szczawinska  
(Anonymity Direction Not Made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms A Everett, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Poland and born on 3rd July 1983. She made an application dated 12<sup>th</sup> August 2013 for a certification of her permanent right to reside in the United Kingdom. This application was refused on 4<sup>th</sup> September 2013 because, it was asserted by the respondent, that she

needed to satisfy Regulation 2(4) and 5 (6) of the Accession (Immigration and Worker Registration) Regulations 2004 and Regulation 15 of the Immigration (EEA) Regulations 2006. She must show a complete period of 12 months legal employment with an employer that is registered with the Worker Registration Scheme and this 12 months must constitute the first of the five years required for a document certifying permanent residence. She had been employed since January 2008 in the UK and had submitted pay slips and P60s for 2008 to 2012 for the employment with Hill House Junior School with the Worker Registration Scheme. She had failed to register her employment with Hill House Junior School with the Worker Registration Scheme.

2. Her appeal was dismissed by First Tier Tribunal Judge Phillips, QC. He recorded at [8] of his determination

*'At Section 7.2 of the application, the appellant states, @please find letter with additional information attached. It explains why I was excluded from WRS registration'. No letter is attached however to the copy of the application that has been provided in the papers before me'.*

3. The judge continued

*'In her notice of appeal the appellant has, stated at Section 8, that she had not registered her employment with the WRS when she commenced employment because her partner was self employed at the time, and that she was a family member of an EEA national and therefore was excluded from registration'.*

4. However he found she had made no reference to her partner save *'obliquely at section 9.12 and at section 11 where she has ticked the unmarried partner's box and has not claimed to be the family member of an EEA national. No such evidence has been supplied in the papers before me. At section 3B of the appeal form, the Appellant has indicated that further documents may be supplied. There is, however, no documentation in the papers before me that might substantiate the appellant's claims to have been a family member of an EEA national'.*

5. The appellant made an application for permission to appeal and repeated that in accordance with Section 2(6)(b) of the Accession Regulations she was excluded from registration because she was a family member of Radoslaw Galer, an EEA national, who was legally working in the UK. He was excluded as he was self employed until April 2011. She now applied not as a family member but as a **worker**.

6. Permission to appeal was granted by First Tier Tribunal Judge Hollinworth on the basis that the judge was not in possession of all the papers relevant to the case. The judge referred at [8] of his determination to Section 7.2 to papers not being attached. It was arguable that the judge was not in possession of all the documentation.

7. At the hearing before me the appellant stated that she had forwarded a copy of the letter explaining why she did not need to register her employment with the WRS. This letter was entitled 'additional information' and explained much as the judge had recorded in his determination why she was excluded from the WRS.
8. Unfortunately in the letter which the appellant states she sent to the Home Office there is reference to the SA302 Self Assessment Tax Calculation from HMRC for her partner. The matter was determined by Judge Phillips on the papers on 17<sup>th</sup> December 2013 but not promulgated until 21<sup>st</sup> March 2014. Nonetheless the letter from HMRC relating to documentation in relation to Mr Galer was not dated until after the promulgation of the decision and evidently obtained in response to that decision.
9. As the judge stated, to demonstrate that she was a worker she needed to show that she was working in accordance with the regulations at the start of her employment. She claims at that time that she was working as a family member. If so, she would be dependent on Mr Galer her former partner demonstrating that he was a qualified person further to Regulation 6 of the EEA Regulations (and working in compliance with the Accession Regulations). The judge identified this point at [10] by referring to documentation which might substantiate her claim to have been a family member of an EEA national. Clearly the judge means a family member of an EEA national at the relevant time. As he states at [10] of his determination, the judge was not satisfied on the documentation before him that she was a family member of an EEA national at the relevant time and he stated 'there is no documentation in the papers before me that might substantiate the appellant's claims to have been a family member of an EEA national'. This documentation was not before the judge and the missing document was her explanation as to why she might qualify not evidence.
10. I do not accept that the letter the appellant indicated was before the Home Office had indeed been sent to the Tribunal as it was undated, she could not provide proof of posting and the letter referred to information which was only obtained after the determination was promulgated. The letter referred to at 7.2 of the application merely, as she stated, explained why she was excluded from WRS. This information was before the judge because it was repeated in the appeal notice. I do not find that the judge therefore made an error in this regard. The application form did refer to a self assessment and a birth certificate but **all** the financial documentation in relation to the former partner and presented by the appellant **post dated** the determination and was received on 24<sup>th</sup> May 2014. The National Insurance Contribution letter was dated 19<sup>th</sup> April 2014, once again after the determination was promulgated.
11. The burden of proof is on the appellant and the notice to the appellant from the Tribunal makes it clear that it is for the appellant to provide

documentation to the Tribunal. It is not for the judge to guess at the documentation that may be supplied.

12. It is open to the appellant to renew her application with the relevant documentation to the Secretary of State to demonstrate she was a family member at the relevant time and that her ex partner was a qualified EEA national at the time.
13. In the circumstances I am not persuaded that the judge made an error of law and his determination shall stand.
14. The appeal is dismissed.

Signed

Date 23<sup>rd</sup> June 2014

Deputy Upper Tribunal Judge Rimington