



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

Appeal Number: IA/06649/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2015
Prepared 15 May 2015**

**Decision & Reasons Promulgated
8 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MS LATABEN JETHALAL MURABIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, Counsel instructed by S Z Solicitors

For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a National of India, date of birth 20 May 1959, appealed against the Respondent's decision, dated 17 January 2014, to refuse to issue a permanent residence card with reference to Regulations 15 and 2 of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). It is to be noted that the Respondent's Notice of Immigration Decision does not indicate any removal being intended. It is also clear that at the hearing of the appeal the issue of Article 8 of the

ECHR was not pursued and indeed the Respondent's position was that such matters would have to be dealt with separately at a later date.

2. The appeal against the adverse decision came before First-tier Tribunal Judge I Howard (the Judge), who on or about 14 October 2014 dismissed the appeal under the 2006 Regulations. Permission to appeal was sought and refused by First-tier Tribunal Judge Lambert on 3 December 2014. On 18 March 2015 Upper Tribunal Judge Macleman granted permission in these terms: "The Respondent's decision is based in part on the Appellant not falling within transitional provisions." The Appellant's grounds of appeal to the FtT take issue with that.
3. Both sides were represented at the hearing. The judge's determination does not mention the issue of the transitional provisions. It was not in the application for permission made to the FtT. But it was raised in the renewed application grounds. It is far from clear that it is a good point. Paragraph 22 of the grounds seems to assume that the time when an appeal could be brought goes on indefinitely, which is doubtful. However, there is the possibility that the judge overlooked the issue which should have been resolved in the determination.
4. The Secretary of State in a Rule 24 response, dated 1 April 2015, supported First-tier Tribunal Judge Howard's decision.
5. At the hearing I provided the parties with sight of the judge's manuscript Record of Proceedings and both parties accept that it makes reference to Regulation 15(1)(b) of the 2006 Regulations. The judge has not recorded any submissions, nor did the papers before him, with reference to whether or not the Appellant fell within the translational arrangements put in place to come into effect on 16 July 2012. These had, amongst other things, the effect of precluding the spouse of a British and EEA dual national benefiting from free movement rights.
6. In the circumstances I have nevertheless heard argument on whether or not the Appellant should have succeeded both under Regulation 15 of itself or under the transitional provisions. The Appellant entered the United Kingdom with leave and obtained rights of residence for five years by reference to her husband, a Portuguese National, being a qualified person under the 2006 Regulations. However, prior to or on the expiry of her residence card on 20 October 2011 her application for permanent residence was made but it was incomplete and the application was returned with an indication of the necessary documentation that would be required to establish the fact that the Appellant met the requirements to obtain permanent residence.
7. For reasons that no-one now knows no application in a revised form was made, which plainly would have been the appropriate course to take.

8. Thereafter in July 2012 the EEA Regulations were amended and it excluded an EEA National who was also a British National being able to bring his/her partner in to the UK as the partner of an EEA National.
9. The next intervening event was that the Appellant's husband acquired British nationality in 2013. After the transitional provisions had come into effect the Appellant at the end of 2013 applied for permanent residence again. She was therefore inevitably excluded because her husband had by that stage got dual nationality as a British National and as a Portuguese National.
10. It therefore followed that the Appellant's status under the provisions of the EEA Regulations was that the residence card which she had had expired but under the provisions of the Regulations she was not entitled to another card.
11. I am satisfied that as at 20 October 2011 the Appellant was entitled to remain in the United Kingdom but was not able under the regulations to apply for a permanent residence card given the change in status to dual nationality of her husband.
12. I am therefore satisfied that under the provisions of Regulation 15(1)(b) of the 2006 Regulations the Appellant was not in a position to succeed with the application. Further I am satisfied, having regard to the transitional provisions, which the parties are agreed are accurately set out in the Respondent's Reasons for Refusal Letter, that first at the material time to which the transition provisions apply the Appellant did not hold a valid registration certificate or residence card issued under the 2006 Regulations. That point does not gainsay the lawful nature of her continued residence in the United Kingdom which, as I understand it the parties are agreed, still runs even today.
13. Secondly the Appellant did not fall within the translational provisions (b) in that there was no application under the 2006 Regulations which had not been determined at the material time being 16 July 2012.
14. Thirdly the Appellant had not made an application before July 2012 which had been refused but in respect of which an appeal could be brought or was pending.
15. Finally under Regulation 15 subparagraphs (c)(i) and (ii) it is plain that the Appellant was not applying for an EEA family permit and therefore those provisions did not assist the Appellant. It is also I think properly agreed by the parties that Regulation 9 does not apply either. Therefore the position is the Appellant is unhappily left without being able to obtain the permanent residence card. Ultimately the consequences of that may or may not be of significance but certainly she is entitled to remain in the United Kingdom under the provisions of the Regulations. It is not asserted that the change in status of the Appellant's husband to become a dual National has taken away that continued right of residence. It seems to

me, and it is not argued, that the Appellant would succeed under 276ADE of the Immigration Rules but the issue has not been argued and nor was it dealt with by the judge and nor was any Article 8 family/private life rights issues resolved by the judge and nor did they fall to be considered by him.

16. In conclusion, I am satisfied that in all probability the issue of the translational provisions was not raised before the judge and therefore it was no error of law in him failing to deal with it but even if it had been drawn to his attention it makes no difference to the outcome of the appeal because the appeal could not succeed on that basis. I am further satisfied that the judge made no error of law with reference to Regulation 15(1) or with reference to Regulation 2 of the 2006 Regulations because of the factual circumstances before him.
17. It may seem harsh that the Appellant has been caught out inadvertently through no fault of her own by the events and changes in the law that took place after the application was returned in November 2011 and no further application was then made. The outcome of this appeal is not, I emphasise, any consequence of the Appellant's conduct so much as those matters I have adverted to above.

NOTICE OF DECISION

The appeal is dismissed under the Immigration Rules.

No anonymity order was previously made nor does one seem to me to be appropriate.

Signed

Date 3 June 2015

Deputy Upper Tribunal Judge Davey