



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21422/2014
IA/21451/2014
IA/21424/2014
IA/21423/2014
IA/21452/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 4 December 2014

Determination Promulgated
On 9 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AZADUL ISLAM CHOWDHURY
AFRINA CHOWDHURY
ANAMI AZAD CHOWDHURY
ANMOL AZAD CHOWDHURY
FARIHA AZAD CHOWDHURY

Respondents

Representation:

For the Appellant: Ms L Kenny, Home Office Presenting Officer
For the Respondents: Mr M Hassan, M Q Hassan Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.

2. The first appellant, a national of Germany, appealed to the First-tier Tribunal against a decision of the Secretary of State to refuse his application for permanent residence in the UK in accordance with regulation 15 of the Immigration (EEA) Regulations 2006 (the EEA Regulations). The Secretary of State was not satisfied that the first appellant was exercising treaty rights continuously for the requisite five year period. The second, third, fourth and fifth appellants are the wife and children of the first appellant and their applications were refused based on the decision in relation to the first appellant and the Secretary of State was further not satisfied that they were continuously resident in the UK for the requisite five year period. Tribunal Judge Griffith allowed the appeals and the Secretary of State now appeals with permission to this Tribunal.
3. The grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in accepting that self-assessment tax returns were evidence of the first appellant's continuous employment given that he identified two periods of ill health in 2010 and 2011. Permission to appeal was granted on the basis that it was arguable that the first appellant failed to discharge the burden of proof upon him by providing the further documents identified in the Reasons for Refusal letter dated 30 April 2014 as being required to show that he met the requirements of the EEA Regulations.
4. Ms Kenny submitted that the Reasons for Refusal letter gave examples of the evidence the appellant would be expected to show to demonstrate that he satisfied the EEA Regulations. She submitted that the evidence produced by the appellant was not sufficient and the Judge applied too low a standard of proof.
5. Mr Hassan submitted that the evidence before the Judge was sufficient. He referred to the evidence in the appellant's bundle including the medical evidence, the first appellant's witness statement and the evidence in relation to Working Tax Credit. Mr Hassan submitted that there was sufficient evidence before the Judge and decision was open to the Judge on the basis of that evidence.

Error of Law

6. The appellant's applied for permanent residence under the EEA Regulations. The relevant provisions of the EEA Regulations are as follows;

15. (1) The following persons shall acquire the right to reside in the United Kingdom permanently –

- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
- (b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

...

7. Regulation 15 does not require that the EEA national show that he has been in continuous employment or self-employment but that he has resided in the UK in accordance with the Regulations for a continuous period of five years.
8. The respondent set out evidence which could have been submitted in connection with the application for permanent residence in the Reasons for Refusal letter. This is not

mandatory evidence under the EEA Regulations. As set out above the Regulations require the demonstration of five years continuous residence in accordance with the Regulations.

9. It is clear from the First-tier Tribunal Judge's determination that she considered oral evidence from the first, second and third appellants. The evidence from the first appellant dealt with his two periods of illness and his two short periods out of the UK. The first appellant said that he was exempt from paying national insurance contributions from mid 2008 until mid 2011. He also said that he does not deposit all of his earnings, which are mostly cash, into his bank account. The first appellant's evidence was corroborated by the second and third appellants. The Judge also considered the documentary evidence before her including tax returns, letters from HMRC, national insurance contribution documentation, council tax documentation, tenancy agreements, medical evidence, utility bills, mini cab driver licences and a letter from the mini cab firm through which the first appellant operates. The Judge took all of this evidence into account and concluded on the balance of probabilities that the first appellant had been continuously residence in the UK for at least five years and exercising treaty rights as a self-employed person during that period.
10. The Judge therefore took all of the evidence into account and I am satisfied that the Judge was entitled to reach that conclusion based on the evidence before her. The respondent has not challenged the Judge's findings that the second, third, fourth and fifth appellants resided in the UK for a continuous period of five years as the first appellant's family members.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of an error on point of law.

Signed

Date: 9 January 2015

A Grimes

Deputy Judge of the Upper Tribunal