



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: IA/50612/2014

THE IMMIGRATION ACTS

**Heard at: Field House
on 26 November 2015**

**Decision and Reasons Promulgated
on 21 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MRS JELENA LOPATJUKA
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: In person

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Latvia, born on 16 February 1986. She appeals with permission against the dismissal of her appeal by First-tier Tribunal Judge Phull against the refusal by the respondent of her application for a permanent residence card as an EEA national under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). Her appeal was considered on the papers.
2. Judge Phull stated at [9] that the appellant did not attend the hearing or submit original documents in support of her appeal despite the fact that this was raised in the refusal letter. An untranslated document was produced.

3. Further, there was also a gap of evidence relating to the five year period, namely 2008, 2010 and 2011 [8]. She was thus unclear which 5 years continuous residence period the appellant relied on as this had not been made clear in her application or the grounds of appeal. She therefore found that the appellant did not satisfy the relevant requirements under the Regulation that she has been living continuously in the UK for five years.
4. In granting permission to appeal, First-tier Tribunal Judge Cruthers stated that it may have been that the Judge had before her bank statement printouts covering the period 2008 until 5 December 2014. Accordingly it was arguable that the Judge could have "inferred" that the appellant was contending for a period of five years continuous residence up to and including the respondent's decision of 27 November 2014.
5. He noted that the appellant had realistically accepted in her grounds seeking permission that she may not have been clear as to which five year continuous residence period 'she was contending for'.
6. Mrs Lopatjuka attended the hearing before the Upper Tribunal on 26 November 2015. She produced a letter she sent to the Loughborough support Centre and which was received on 15 June 2015 in which she stated that she and her husband completed an EEA 3 application form in October 2015. Her husband was granted residence, whereas she was not on the basis that she did not produce the original marriage certificate. She accepted that the original certificate was not provided as it is in Latvian and she assumed that the certified copy would be enough to prove that she is the wife of Mr Lopatjuka, bearing in mind that they have the same last name, address and have a son.
7. She agreed that it was unclear which five years' continuous residence period she sought to rely on. She indicated that she relies on the period for the last five years up to October 2015, which is the date when she and her husband applied for residence documents.
8. She has also produced various documents including an original certificate of marriage together with a translation; bank statements for the last five years and a BA Hons degree from the University which she completed in the three years between 2009 and 2012.
9. She informed the Tribunal that she became pregnant in December 2012 and did not work for nine months until her son's birth on 9 September 2013. The period of continuous residence that she relied on was between 2009 and 2015.
10. She explained that she did not work at all during her pregnancy as there were 'issues' associated with the pregnancy. In effect she contended that she has retained continuity of residence for the purpose of the 2006 Regulations. However, no evidence was produced to the First-tier Tribunal to justify, explain or excuse the nine month gap.
11. The appellant also provided her degree certificate from the London Metropolitan University dated 12 July 2012.

12. In reply, Ms Isherwood helpfully referred the appellant to the provisions of Regulation 7, which defines a family member. A copy of the 2006 Regulations were provided to the appellant during the course of Ms Isherwood's submission. For the purpose of the 2006 Regulations, a spouse is treated as the family member of another person.
13. Ms Isherwood referred the appellant to Regulation 15(1) relating to the acquiring of a permanent right of residence in the United Kingdom. This includes an EEA national who has resided in the UK in accordance with these regulations for a continuous period of five years. That potentially applies to the appellant – Regulation 15(1)(a). Her attention was also drawn to definition of qualified workers set out at Regulation 6 (1).
14. Ms Lopatjuka indicated that she now understood the position. She submitted that she was a qualified person as she had been a self sufficient person under Regulation 6(1). She stated that she had never become a burden on the social assistance system of the UK during the period of her residence. However, she accepted that she had never had comprehensive sickness insurance cover in the UK.

Assessment

15. I have had regard to the appellant's current submissions, including those relating to the nine month gap from working during her pregnancy. As already noted she did not rely before the First-tier Tribunal on the her pregnancy in an attempt to show continuity of residence.
16. I have nonetheless considered the submissions in that regard.
17. I have had regard to the decisions of the CJEU construing the Citizen's Directive. The term "worker" within Article 45 covers, to a greater or lesser extent, not only actual workers but also women who, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth, give up work or jobseeking, provided they return to work or find another job within a reasonable period after the birth of her child - Jessy St Prix v SSWP [2014] CJEU C-507-12.
18. In Weldemichael and another (St Prix [2014] EU ECJ C-507/12; effect) [2015] UKUT 00540 (IAC), the Tribunal at [59] answered the questions posed at the outset, as follows:
 - (a) A woman will retain continuity of residence for the purposes of the 2006 EEA Regulations for a period in which she was absent from working or job seeking if, in line with the decision of the CJEU in Jessy St Prix;
 - i. At the beginning of the relevant period she was either a worker, or seeking employment;
 - ii. the relevant period commenced no more than 11 weeks before the expected date of confinement (absent cogent evidence to the contrary that the woman was physically constrained from working or seeking work);
 - iii. the relevant period did not extend beyond 52 weeks; and
 - iv. she returned to work.

19. In applying this reported decision, I find on the evidence that the appellant did not retain continuity of residence for the purpose of the 2006 Regulations. She was absent from working or seeking employment for the whole of her pregnancy. There was no cogent evidence produced that she was in any way physically constrained from working or that she was unable to work. Nor is there any evidence that she was seeking work during that period. Her decision to remain off work was a voluntary choice in the circumstances.
20. I find that the appellant has not shown that she retained continuity of residence for the purposes of the 2006 EEA Regulations during her pregnancy.
21. Having regard to the limited evidence before the First-tier Tribunal, the finding that she had not shown that she has resided in the UK in accordance with the 2006 Regulations for a continuous period of five years, is sustainable.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date 10 December 2015

Deputy Upper Tribunal Judge Mailer