



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/16997/2015

THE IMMIGRATION ACTS

Heard at: Birmingham
on 14 March 2016

Decision and Reasons Promulgated
On 25 April 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS FATIMA LAATIOUI
NO ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr R Martin, counsel (instructed by J R Jones Solicitors)

DECISION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as the claimant.
2. The secretary of state appeals with permission against the decision of First-tier Tribunal Judge Agnew, promulgated on 5 August 2015 allowed the claimant's appeal under the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations").

3. The claimant applied for a residence card as the family member of an EEA national. The appeal was considered on the papers.
4. The claimant had applied on 18 December 2014 for a permanent right of residence as confirmation of a right to reside in the UK. She had to show that her sponsor has exercised Treaty rights in the UK for a continuous period of five years. Moreover, she had to show that she has been resident in the UK for a continuous period of five years.
5. The Judge found that the claimant had sufficiently demonstrated that her sponsor had been exercising Treaty rights since 2009. The appeal was accordingly allowed.
6. However, the Judge omitted to make a finding in respect of the second ground for refusal, relating to the lack of documentation evidencing the claimant's own residence in the UK for a period of five years. Accordingly, it was asserted that she had not shown that she met all the requirements of Regulation 15(1)(b) of the 2006 Regulations.
7. Permission to appeal was granted by First-tier Tribunal Judge Omotosho on 16 December 2015.
8. In the Rule 24 response, it was contended on behalf of the claimant that she had provided in her appeal bundle documents showing that she was continuously present in the UK for five years. She had given birth to two children in the UK and provided documents including bank statements, medical letters and bills which proved the same. Accordingly, it is contended that the Judge did not make a material misdirection in law.
9. On behalf of the secretary of state, Mr Mills accepted that it may well have been that the Judge had before him evidence showing that there had been five years' continuous residence in the UK.
10. He referred to the helpful schedule of evidence produced by Mr Martin relating to the earliest period of such residence.
11. This included her bank statement as well as her husband's statement. There was also an annual review of Tax Credits from pages 70-74 dated 29 April 2010 referring to the claimant by name. There was a final tax credit decision dated June 2010; a tax credit for the period 25 September 2009 to 5 April 2010; a letter from NHS Heart of England confirming the birth in the UK in June 2010 and October 2010 of her children. This also confirmed her attendance at a clinic in January 2010.
12. There was a letter from a GP practice dated 20 May 2015 confirming registration on 13 November 2009; birth certificates; and a JobCentre Plus letter dated November

2009 confirming an interview attended and the NI number that was granted. There was also a bank letter dated March 2011 and a water bill dated November 2010.

13. Mr Mills accepted that this evidence had not been addressed by the Judge. Although there has been 'a clear error of law', it was not material. It is inevitable that the Judge would have found that she had resided continuously in the UK for five years.
14. I am grateful to Mr Martin for the schedule of evidence produced. I am satisfied that in the circumstances, the bundle of evidence presented by the claimant disclosed satisfactory evidence that the claimant had been continuously present in the UK for five years. This included not only the fact that she gave birth to two children here, but there were further documents including bank statements, medical letters and bills which substantiated the claim.
15. In the circumstances, I accept the submission that the asserted error of law was not material in that it had been open to the Judge to allow the appeal on the evidence produced.

Notice of Decision

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

No anonymity direction is made.

Signed

Date 18 April 2016

Deputy Upper Tribunal Judge Mailer