Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/08852/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 April 2017	**On 8 May 2017**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MAN NA LAW
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. C. Law of counsel
For the Respondent: Mr. P. Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who was born on 19 March 1962, is a national of China. On 12 September 2005 the Appellant applied for an EEA Residence Card and one was issued on 28 October 2005. She applied for another EEA Residence Card, which was issued on 25 January 2011. She then applied for permanent residence on 25 January 2016.

2. Her application was refused on 15 July 2016 on the basis that she had not provided any evidence that her Portuguese partner had been exercising a Treaty right between April 2011 and April 2014. The Respondent accepted that there was a P60 for the Appellant's partner for the year ending 5 April 2015 and a wage slip, dated 1 January 2016.

3. The Appellant appealed against this decision on 21 July 2016 and she attached a letter from HM Revenue & Customs, dated 12 March 2015, and a P60 for the year ending 5 April 2016 and explained that she had forgotten to include the necessary evidence when she made her application. Her appeal was heard by First-tier Tribunal Judge Obhi on the papers on 28 September 2016 and the Judge appeared to dismiss her appeal in a decision and reasons promulgated on 25 October 2016.

4. The Appellant appealed against this decision on 7 November 2016 and First-tier Tribunal Judge Easterman granted her permission to appeal on 27 February 2017. He noted that the content of the decision had all the hallmarks of a simple error, with the Judge intending to allow the appeal then stating that it was dismissed.

ORAL HEARING

5. Counsel for the Appellant stated that he relied on the grounds of appeal and submitted that that the Judge had made a slip of the pen when dismissing the appeal, as the Appellant had satisfied the requirements for a grant of permanent residence.

6. In response, the Home Office Presenting Officer submitted the documents required by previous directions and stated that he agreed with counsel for the Appellant.

THE ERROR OF LAW DECISION

7. The Appellant needed to show that her partner had been exercising his Treaty rights, as a worker, between 25 January 2011 and 25 January 2016 in order to meet the requirements of regulation 15 of the Immigration (European Economic Area) Regulations 2006.

8. There was a letter from HM Revenue & Customs, dated 12 March 2015. This confirmed that the Appellant's partner had been working during the years ending 5 April 2011, 5 April 2012, 5 April 2013 and 5 April 2014. In addition, there were P60s for the years ending 5 April 2015 and 5 April 2016.

9. In paragraph 17 of her decision and reasons First-tier Tribunal Judge Obhi stated that she was minded to allow the Appellant's appeal as there was just one issue between the parties, which was whether the Appellant's partner had been exercising a Treaty right for the necessary period of time. She noted that the letter from HMRC set out the earnings and tax

paid since 2008 and the P60s provided the information for the necessary period not covered by this letter.

10. As a consequence, on the one issue between the parties, First-tier Tribunal Judge Obhi found in favour of the Appellant. It is also clear from paragraph 18 of her decision and reasons that the only reason why she did not award costs against the Respondent was that the Appellant had accepted that she had forgotten to submit some of the necessary documents when she made her application.

11. It is clear that the First-tier Tribunal Judge made an error of fact when she stated in her decision paragraph that she had dismissed the Appellant's appeal. The circumstances in which an error of law could amount to an error of law were discussed in *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982. In paragraph 28 Lord Justice Brooke considered when an appellate body like the IAT, whose primary role during the relevant period was restricted to identifying and correcting errors of law, could entertain an argument to the effect that the outcome in the lower court was unfair, as a result of a mistake of fact, and that this constituted an error of law which entitled it to interfere.

12. In paragraph 29 he also reminded himself of the decision in *E and R v Home Secretary* [2004] EWCA Civ 49 and accepted that the Tribunal could interfere where common law fairness demanded it did so and when a minister has taken a decision on the basis of a foundation of fact which was demonstrably wrong. At paragraph 64 of that case Carnwath LJ said that there was a common feature of all the cases previously referred to which may be when the Secretary of State had a shared interest with both the particular appellant and with any tribunal or other decision-maker that might be involved in the case in ensuring that decisions were taken on the best information and on the correct factual basis. At paragraph 66 he identified asylum law as representing a statutory context in which the parties shared an interest in co-operating to achieve a correct result but went on to state that he was not laying down a precise code.

13. I find that the same principle applies in other migration related cases. For these reasons I find that First-tier Tribunal Judge Obhi made a clear error of fact in her decision and reasons which amounted to a material error of law.

DECISION ON ERROR LAW

14. The appeal is allowed.

15. First-tier Tribunal Judge Obhi's decision and reasons is set aside.

16. The appeal is retained in the Upper Tribunal.

THE RE-HEARING

17. Both parties agreed that it would be in the interests of justice for me to retain the appeal in the Upper Tribunal and make a decision on the evidence before me.

18. I have taken into account the documents which were in my file and have noted that the one issue between the parties was whether the Appellant's partner had been exercising a Treaty right for the necessary five-year period. As noted above, there was a letter from HM Revenue & Customs, dated 12 March 2015, which confirmed that the Appellant's partner had been working in the United Kingdom during the years ending 5 April 2011, 5 April 2012, 5 April 2013 and 5 April 2014. In addition, there were P60s for the years ending 5 April 2015 and 5 April 2016. The Respondent had accepted that the Appellant was a member of the sponsor's family and she had been entitled to a residence card as his dependent since 28 October 2005. As a consequence, I find that she has qualified for a permanent right of residence for the purposes of rule 15(1)(b) of the Immigration (European Economic Area) Regulations 2006.

DECISION ON RE-HEARING

19. The Appellant's appeal is allowed.

Nadine Finch

Upper Tribunal Judge Finch

Date: 24 April 2017