



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09128/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 1 June 2017

Decision & Reasons Promulgated
On 12 June 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MONIKA NATALIA BARAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Monika Natalia Baran, was born on 19 February 1987 and is a female citizen of Poland. The

appellant had been working in the United Kingdom since 2005 and she made an application for a permanent residence card under the Immigration (EEA) Regulations 2006. That application was refused by a decision of the respondent dated 18 July 2016. The appellant appealed to the First-tier Tribunal (Judge Housego) which, in a decision promulgated on 27 September 2016, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The right to recognition of permanent residence in the United Kingdom is given under Regulation 15 of the 2016 Regulations:

Right of permanent residence

15. –(1) The following persons 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 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;

(c) a worker or self-employed person who has ceased activity;

(d) the family member of a worker or self-employed person who has ceased activity, provided –

(i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and

(ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;

(e) a person who was the family member of a worker or self-employed person where –

(i) the worker or self-employed person has died;

(ii) the family member resided with the worker or self-employed person immediately before the death; and

(iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;

(f) a person who –

(i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and

(ii) was, at the end of the period, a family member who has retained the right of residence.

(2) Residence in the United Kingdom as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.

(3) The right of permanent residence under this regulation is lost through absence from the United Kingdom for a period exceeding two years.

(4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

3. The respondent's refusal letter makes reference to the forms P60 submitted by the appellant in support of her application. The appellant had worked for a number of different companies during the period of her residence and explained to me that one of the companies had undergone a transfer of undertaking to a different company. The refusal letter makes reference to the European Modern Guidance which, it is stated, should be considered when determining whether the appellant's residence and exercise of Treaty Rights was "genuine and effective". Because of the low figures shown on the appellant's P60 forms, the respondent took the view that the appellant's employment could only be considered "genuine and effective" from the start of the 2014 financial year (described as '1 April 2013' - which would appear to be an error since the tax year begins on 6 April). In consequence, the respondent took the view that the appellant had not established that she had exercised Treaty Rights in the United Kingdom for a period of five years prior to the date of her application which was made in March 2016.
4. Judge Housego was at something of a disadvantage given that he was dealing with this appeal on the papers. He appears to have been concerned with the fact that the appellant had given birth to a child in May 2005. The appellant, however, had sought to establish five years of permanent residence in the period immediately preceding her application in March 2016; I am not sure, therefore, why the child's birth date should have been a relevance. The appellant told me that she had sought to establish that she had been working or at the same time also a student from March 2011 to March 2016. Her evidence indicated that she had been in part-time work up until November 2012 and had since that time been in full-time employment. Mrs Pettersen, for the Secretary of State, acknowledged that the evidence would appear to show that the appellant had been living in the United Kingdom in accordance with the Regulations and exercising Treaty Rights as a worker/jobseeker/student throughout the five year period prior to the date of her application. I am grateful to Mrs Pettersen for that indication because it coincides with my own interpretation of the evidence which was before Judge Housego. The appellant did not need to show (as Judge Housego appears to have believed - see [14]) that she had worked prior to the birth of her daughter and then for three years after the birth. Leaving aside the "Guidelines" which are referred to in the refusal letter, the evidence plainly indicates that the appellant had been living in the United Kingdom in accordance with the Regulations for the period of five years prior to the date of her application. I am satisfied that Judge Housego may have erred in law at [14] in his assessment of the

evidence but, given that the appellant should in any event have succeeded in her appeal, I refrain from setting aside his decision which shall stand accordingly.

Notice of Decision

5. This appeal is dismissed.
6. No anonymity direction is made.

Signed

Date 10 June 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

The fee order made by Judge Housego (£80) shall stand.

Signed

Date 10 June 2017

Upper Tribunal Judge Clive Lane