



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/04813/2015
IA/04816/2015 & IA/04999/2015

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, Decision & Reasons
Belfast Promulgated
On 27 July 2017 On 21st August 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M T - FIRST APPELLANT
M J T - SECOND APPELLANT
AS - THIRD APPELLANT**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: First appellant in person; no representation for the other appellants

For the Respondent: Mr McVeety, Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Grimes promulgated on 25 August 2016 dismissing their appeals against the decision of the respondent made on 19 and 20 January 2015 to refuse the first appellant a registration certificate and the second and third appellants residence cards as confirmation of their right to reside

in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (“the EEA Regulations”).

2. The first appellant is a citizen of Ireland. She is married to the second appellant who is a citizen of India. The third appellant is the adult son of the second appellant and is also a citizen of India.
3. The first and second appellants were married in India in 2012. The second and third appellants applied for family permits to join the first appellant in the United Kingdom. Those applications were refused but were granted pursuing an appeal ultimately to the Upper Tribunal allowed by the President, Mr Justice McCloskey. They entered the United Kingdom in 2014.
4. The basis of the appellants’ case is that the first appellant is a worker who had ceased activity as set out in Regulation 5 of the EEA Regulations and had thus acquired permanent residence under Regulation 15(1)(c) of the Regulations. Alternatively, it was argued that she had obtained permanent residence under Regulation 15(1)(a) on the basis of five years’ continuous residence in the United Kingdom in accordance with the EEA Regulations. The second and third appellants’ rights to a registration certificate are dependent on the first appellant having acquired a permanent right to reside under the EEA Regulations as she is not otherwise a qualified person given that she does not work, is not self-employed, is not a student and is reliant on benefits.
5. When the matter came before First-tier Tribunal Judge Grimes on 11 August 2016 the appellants were represented by Mr S McTaggart instructed by McFadden Perry Solicitors. The judge heard evidence from the appellants as well as the first appellant’s sister. The judge concluded that: -
 - (i) there was an inconsistency in the evidence as to whether the first appellant had ceased economic activity, given she had claimed she had not worked since 1983 [11] alternatively claiming that she had worked for her sister between 1990 and 1995;
 - (ii) she was not satisfied by the evidence that the first appellant had ended her employment due to incapacity [12] as the letter from her GP dated 4 February 2015 did not state when she became unfit for work or whether she had ended employment in 1983 or 1995 as a result of permanent incapacity; and,
 - (iii) although the report from Dr Bell of 29 September 2015 concluded that the first appellant had severe and enduring medical health problems which rendered her permanently unfit for work, and that on the balance of probabilities she had been unfit for work since approximately 1983, she was not satisfied that the appellant had terminated in 1983 as a result of permanent incapacity [15];

- (iv) there were inconsistencies in the evidence of the first appellant's claimed work between 1990 and 1995 in her sister's shop it concluded evidence about the claimed employment was vague and contradictory [16] and did not establish that she had left that employment due to a permanent incapacity to work;
 - (v) she was not satisfied that the applicant had been residing in the United Kingdom in accordance with the Regulations for a continuous period of five years from 1990 until 1995 and she had not therefore shown that she had acquired permanent residence [17];
 - (vi) as had been accepted by their Counsel, the second and third appellants' rights were parastical as the first appellant therefore they could not succeed.
6. The appellants sought permission to appeal on the grounds that in reaching her findings of fact, the judge had failed properly to consider the expert report both in respect of when the first appellant had ceased work and in assessing her evidence.
 7. On 12 April 2017 First-tier Tribunal Judge Bird granted permission to appeal.
 8. When the matter came before me, the first appellant appeared and stated that she wished to withdraw her appeal. I was satisfied that in all the circumstances of this case it would be right to accept that.
 9. After the hearing I received an email which purports to have been sent by the first and second appellants. It requested that the appeal be adjourned owing to the first appellant's ill-health, it being stated that she had been admitted to a mental health hospital approximately a month earlier. No evidence that the first appellant had been admitted to hospital is provided although there is evidence of an appointment as an outpatient on 9 February 2017.
 10. I am satisfied that there was no basis on which the appeal could be adjourned. The sole reason given as to why it should be adjourned was the claimed illness of the first appellant who had in fact attended in person
 11. Given that the first appellant no longer challenges the findings of fact made by the First-tier Tribunal, the appeals of the second and third appellants must inevitably fall to be dismissed.
 12. Further, and in any event, assuming that the second and third appellants are still challenging the findings of fact made by the First-tier Tribunal I consider that there is no merit in the grounds.
 13. The report of Dr Bell was written in 2015 long after the first appellant had ceased employment be that either in 1983 or in 1995. Even allowing for the diagnosis that the first appellant has significant difficulties and is undoubtedly a vulnerable adult, it nonetheless remained for the appellants

to show that the first appellant's employment had ceased owing to permanent incapacity. Whilst it is evident that the first appellant ceased to work in 1983 and that this is shown by some of the documentary evidence to which the judge refers, it was open to the judge to conclude that she was not satisfied that this had occurred as a result of permanent incapacity. She was entitled to reach that decision on the basis of the evidence and the reasons for doing so are adequate and sustainable. They are not, contrary to the grounds, based entirely on the reliability or otherwise of the first appellant's evidence. Of particular note is the absence of any indication in the letter of the first appellant's manager until 1983 that the first appellant had ended her employment due to incapacity.

14. Similarly, with regard to the claimed employment between 1990 and 1995, Dr Campbell's evidence is not relevant to the evidence of the first appellant's sister which was that she had worked for one or two hours three or four days a week, had not been paid wages and had paid from her own money. It does not explain either the inconsistency in Miss Crawford's evidence [16].
15. Accordingly I am satisfied that the judge was entitled to conclude that he was not satisfied that the first appellant had ceased work owing to permanent incapacity in 1983. Further, and in any event, it is difficult to note how the work in 1990 to 1995 could be construed as work which was effective.
16. Accordingly, for these reasons, I am satisfied that the decision of the First-tier Tribunal did not involve the making of an error of law with respect to the appeals of the second and third appellants. I therefore uphold these decisions.

Summary of Conclusions

1. The appeal of the first appellant is withdrawn. The decision of the First-tier Tribunal in respect of her appeal therefore stands.
2. The decision of the First-tier Tribunal insofar as in relation to the second and third appellants did not involve the making of an error of law and I uphold them.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

3. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

18 August 2017

A handwritten signature in black ink, appearing to read "James Rintoul". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Rintoul".

Upper Tribunal Judge Rintoul