



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: EA/00815/2016

**THE IMMIGRATION ACTS**

At Heard at Field House  
on 21.05.2018

Decision & Reasons Promulgated  
On 25.05.2018

Before:

Upper Tribunal Judge  
John FREEMAN

Between:

Iram NAZ

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Billal Malik* (counsel instructed by direct access)

For the respondent: Mr Ian Jarvis

**DECISION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Susan Turquet), sitting at Hatton Cross on 25 May 2017, to dismiss an EEA appeal by a citizen of Pakistan, born 1970, and married there to a German citizen called Mohd. Iqbal (the sponsor), more recently working as a taxi-driver in this country. The appellant had held an EEA residence card on that basis from 2009 to 2015, when she applied for a permanent one; but on 6 January 2016 that was refused, on the grounds that she had not provided proper evidence of

- (a) five years' continuous residence here; or
- (b) her husband's exercise of Treaty rights here for the same length of time.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.  
(2) persons under 18 are referred to by initials, and must not be further identified.*

2. The judge was satisfied on (a), but not on (b), which is the subject of this appeal. There is no real question but that the sponsor was exercising Treaty rights by working here as a taxi-driver from April 2012, just over five years before the date of the hearing, until 5 April 2016, the last date he was able to vouch for with a P60. The question is whether the judge was entitled not to be satisfied that the sponsor was doing so from the following day till the date of the hearing, which time I shall call 'the last year', though in fact it is slightly more.
3. The judge's reasons for not being satisfied on the last year come down to this, at paragraph 20:

The date of the hearing is five years after the April 2012 date. There is no supporting evidence of income after the P60 for the year ending April 5 2016. In the event that the P60 for the financial year 2016/2017 is not yet available, it is reasonable to expect the Sponsor to have provided other documentation showing his income in that tax year for example his receipts, invoices and bank statements.
4. While there is no prescribed evidence on an application of this kind, as in a points-based system [PBS] case, I regard that approach as eminently reasonable, in general terms. The suggestion in the grounds of appeal that the judge should have been prepared to make the necessary finding on the basis of oral evidence alone is wholly misconceived. It is much too easy to make the necessary assertions, if not obliged to back them up with documentary evidence. While taxi-drivers no doubt do most of their business in cash, they have to find some way of satisfying the Revenue about their earnings, and can reasonably be expected to do the same with the immigration authorities.
5. However, the judge had been satisfied that the sponsor had been exercising Treaty rights for nearly four years out of the five required, and, as she also noted, he had held a taxi licence from 2011, and his current one remained valid till 6 November 2017. In those circumstances, it seems to me that, as a matter of principle in this particular case, she ought reasonably have been prepared to give more latitude than would have been required in the case of a sponsor arriving fresh on the scene.
6. What allowances might have been made, and what the effect should have been, was for the judge, who had heard the evidence of the sponsor, and of the appellant, to decide. I have not done so, and am not prepared to re-decide the case for myself without conclusive documentary evidence for the last year. The result is that there should be a resumed hearing before the same judge, who, now that the appellant and the sponsor have been put clearly on notice about this, may reasonably expect such evidence to be produced.

**Appeal allowed: decision set aside in part**

**Further hearing before Judge Turquet at Hatton Cross**



(a judge of the Upper Tribunal)

Decision signed: **23.05.2018**