



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06339/2016  
EA/06343/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 1 March 2018

Decision & Reasons Promulgated  
On 14 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTEER

Between

FATOU JAGNE-JAITEH  
HADDIJATOU JAITEH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mupara, counsel.  
For the Respondent: Mr P Nath, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellants against a decision of the First-tier Tribunal dismissing their appeal against the respondent's decision of 5 March 2016 refusing their applications for permanent residence cards as the dependants of an EEA national, exercising treaty rights in the UK.

Background

2. The appellants are citizens of Gambia born on 14 August 1964 and 3 September 1996 respectively. They are the wife and step-daughter of their sponsor, a Spanish national, who has been residing in the UK in the exercise of his treaty rights since

October 2008. The first appellant arrived in the UK on 25 December 2007 and she married the sponsor on 1 March 2010. She was issued with a residence card on 28 September 2010. The second appellant came to the UK as a dependant in May 2015.

3. On 19 October 2015 the appellants applied for permanent residence cards. In order to qualify they had to show that they were family members of an EEA national who had resided in the UK with that national in accordance with the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") for a continuous period of five years. In their application they claimed that the sponsor was a qualified person as he had been in or seeking employment for five years.
4. The respondent was satisfied from the evidence submitted that the sponsor was a qualified person in employment for the period April 2010 to May 2013 and from May 2014 to April 2015. It was claimed that the sponsor had been a job seeker for the period August 2013 to April 2014 but that was a period exceeding six months and the appellants' had failed to provide any compelling evidence of their sponsor seeking employment and having a genuine chance of engagement (reg. 6(6) of the 2006 Regulations).

#### The Hearing before the First-Tier Tribunal

5. At the hearing before the First-tier Tribunal it was argued that the appellants fell within the transitional provisions in schedule 3 of the European Economic Area (Amendment) Regulations 2012 but the judge rejected that argument and there is no appeal against that part of the decision. The judge accepted that the sponsor had been working as set out in the written evidence from HMRC and that he had claimed job seekers allowance (JSA) from 20 May 2013 to 6 May 2014. She noted that he had entered into a jobseeker's agreement on 23 August 2013 which identified the jobs he was looking for and what regular steps he would take to identify jobs.
6. The judge commented that the sponsor was recorded as having been paid £290 in the period from 20 May 2013 to 6 May 2014 (referring to A29 in the appellants' documents) but that would only amount to about four weeks' worth of benefit. She said that she had not been provided with any other evidence that he was looking for work and he had not provided a witness statement or other documents to show what he was doing to find work in that period. She said that, in the absence of any other evidence that he was looking for work and complying with his agreement, she found that the reason that JSA was only paid for a few weeks in a claim spanning a year was that he had been sanctioned for not complying with the Job Centre's requirement to look for work and to show he looked for work.
7. On this basis the judge found that the appellants had not shown that the sponsor met the first part of condition B in reg. 6(6) of providing evidence that he was seeking employment during the relevant period. She accepted that he had started a new job in May 2014 and it followed that he had started to look for work at some point, likely to be put towards the end of the period in question, and he had therefore shown that he had a genuine chance of being engaged because that was what had happened at

the end of the period when he was looking for work, so fulfilling the second part of Condition B. Accordingly, she dismissed the appeal on the basis that it was not shown that the sponsor was a qualified person between August 2013 and April 2014 and so far as the second appellant was concerned, she did not qualify in any event, not having accrued five years residence in the UK as required by reg. 15(1)(b).

### The Grounds and Submissions

8. In the grounds of appeal, it is argued that the judge made a material error in that she failed to take account of the evidence at A31 of the appellants documents, a letter dated 21 September 2015 from HMRC to the sponsor, which confirmed that the sponsor had received £3,227 JSA for the period starting 20 May 2013. Mr Mupara adopted the grounds, arguing that the judge had erred in law by proceeding on a misapprehension of the amount of JSA the sponsor had received. There had, therefore, so he submitted, been no proper basis for the finding that the sponsor had been sanctioned for not complying with the Job Centre's requirements. Mr Nath questioned whether the evidence in A31 had been raised before the judge but accepted that, if it had, she had erred by failing to take a relevant matter into account.

### The Error of Law

9. I am satisfied that the judge did err in law by proceeding on a misapprehension of the amount of JSA paid to the sponsor when he was out of work. The amount of JSA received was clearly a relevant issue and the judge failed to take into account the evidence in the letter of 21 September 2015 (A31). On this basis she erred in law and the decision is set aside. The figure of £290 JSA was taken from A29, whereas in A31 under the sources of income for tax year ended 5 April 2014, it is recorded that he received £3227 JSA, with a start date of 20 May 2013. The letter also recorded for tax year ended 5 April 2013 receipt of JSA of £1704, although that entry is confusing as it shows a start date of 20 May 2013 and an end date of 17 March 2013.

### Re-making the Decision

10. Both representatives agreed that if I found an error of law, I should re-make the decision myself and they did not seek to make any further submissions. When reaching her findings, the judge proceeded on the basis that the appellant had been paid £290 JSA in the period May 2013 to May 2014. It is impossible to reconcile the information in A29 and A31. In A31 it is said that the sponsor received £3227 JSA in the period from 20 May 2013 whereas A29 gives a figure of £290. A29 also refers to JSA of £1704 being received from 25 September 2012 to 17 March 2013 in tax year ending April 2013, A31 giving the same figure for that tax year but with dates of 20 May 2013 to 17 March 2013. The date of 20 May 2013 is consistent with the other dates for the start of the receipt of JSA but the end date appears to be incorrect and in A29 the start date of 25 September 2012 is inconsistent with the sponsor being employed until May 2013.

11. On balance, I am satisfied that the figures in A31 are more likely to be accurate. I therefore find that the sponsor received JSA of £3227 in tax year ending April 2014. There is no adequate evidence to support a finding that the sponsor had been sanctioned for not complying with the Job Centre's requirements. On the evidence before me I am satisfied that sponsor was seeking employment during the relevant period. He, therefore, meets both parts of Condition B in reg. 6(6) and it is shown that he was a qualified person during the relevant period of five years. It follows that the first appellant is entitled to a permanent resident card. The grounds do not challenge the finding that the second appellant did not qualify for permanent residence as she has not accrued five years' residence.

### Decision

11. The First-tier Tribunal erred in law such that the decision relating to the first appellant should be set aside. I re-make the decision by allowing the appeal by the first appellant.
12. No anonymity order was made by the First-tier Tribunal.

Signed: H J E Latter

Dated: 9 March 2018

Deputy Upper Tribunal Judge Latter