



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

Appeal Number: EA/09265/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 28 September 2018**

**Decision & Reasons Promulgated
On 15 October 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**DIANA ISABEL CRUZ CACHOLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: in person

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Aujla, promulgated on 16 May 2018 dismissing her appeal against the decision made on 9 November 2017 dismissing her application for a residence card as confirmation of her permanent right to reside in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”).
2. The appellant is a citizen of Portugal born in 1997. She arrived in the United Kingdom in 2012 to join her mother who has been resident in the United Kingdom for over fifteen years and who holds a card confirming her

right of permanent residence. She attended college, undertook some part-time employment and then in 2016 took up full-time employment.

3. The respondent refused the application on the basis that the appellant had not shown that she had been exercising treaty rights for five years continuously. That is because although she had provided evidence of studies, she had not provided evidence showing that:-
 - (1) she had held sufficient funds for the entire duration of studies; or
 - (2) she had held comprehensive medical insurance while a student.
4. The appellant did not request an oral hearing. The matter then proceeded to determine the application on the papers, noting [9] that the respondent had not provided a bundle but he was satisfied that he could proceed in any event, concluding that the appellant had not shown that she had comprehensive medical insurance and on that basis, although she was maintained by her mother throughout the period, she could not be regarded as exercising treaty rights. The judge considered at [16] that the appellant could not succeed as a dependent child of her mother given the lack of documentary evidence of support in the claim such as a birth certificate.
5. The appellant sought permission to appeal on the grounds that the judge had failed to note that there was evidence that she was related to her mother, given that their ID cards stipulated the names of her parents and as her mother had sent a letter explaining that she was living with her and paying for all her needs as well as a copy of her permanent residence card.
6. On 6 August 2018, First-tier Tribunal Judge Birrell granted permission noting that the judge had observed that the respondent had not provided a copy of the bundle which, arguably, the appellant could reasonably have expected to have been provided.
7. When the matter came before me, Mr Bates explained that a copy of the respondent's bundle had indeed been forwarded to the Tribunal on 22 March 2018 in electronic form but it was unclear why this had not been put before the judge. He was also concerned that the bundle appeared in any event to be incomplete.
8. In the circumstances, I am satisfied that there was a procedural error in this case in that a bundle had indeed been provided but for reasons which are unclear, had not been put before the judge. I am satisfied that this was an error and I am satisfied also that the error is material given that this clearly establishes that the appellant and her mother are related, those documents being attached within the bundle. There was no proper determination of the appeal through no fault of the judge and accordingly the matter falls to be remitted to the First-tier Tribunal for a fresh decision on all issues.

9. The appellant will also need to provide the following to the First-tier Tribunal:-
 - (1) Evidence that she has been supported by her mother, for example evidence that they are living together at the same address, evidence of transfers of money from the appellant's mother to her in form of, for example, bank statements for each of them, as well as
 - (2) witness statements from both the appellant and her mother as they will need to give evidence on the issue of dependency
10. The appellant should also if possible obtain a letter from HM Revenue & Customs setting out:-
 - (1) the date at which she entered into the National Insurance system; and
 - (2) the amount of contributions she has made since then.
11. The appellant is reminded that in order to assist the First-tier Tribunal she will need to provide the following:-
 - (1) a bundle comprising copies of all the relevant documents; and
 - (2) take the original documents to court on the day of the hearing.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the decision to the First-tier Tribunal for a fresh decision on all issues, the appeal not to be heard by First-tier Tribunal Judge Aujla.

No anonymity direction is made.

Signed

Date 9 October 2018



Upper Tribunal Judge Rintoul