Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04121/2018
EA/04608/2018
EA/04611/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th March 2019	**On 27th March 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

LILIA [P]
[E P]
[M P]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms L [P] in person
For the Respondent: Mr E Tufan, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. The Appellants, who are mother and her two children, appeal against the decision of First-tier Tribunal Judge Monaghan promulgated on 8 October 2018, in which the Appellants' appeals against the Respondent's decision

on their applications for permanent residence dated 30 May 2018 were dismissed.

2. The Appellants are citizens of Romania who applied for EEA Residence Cards in recognition of a right of permanent residence on 30 April 2018. The Respondent refused the applications on the basis that there was inadequate evidence to show that they were qualified persons in the United Kingdom for a continuous five year period. The appeal against the refusal was determined on the papers and permission to appeal against it granted on the basis that it was arguable that the First-tier Tribunal had erred in law in concluding that there was insufficient evidence that the First Appellant had established a continuous five-year period of residence as a qualified person. Specifically, it was arguable that the JSA letter dated 8 April 2013 and the P45 dated 24 May 2013 were not considered by the First-tier Tribunal and the outcome of the appeal may have been different if they had been considered.

The appeal

3. The Appellants appeal on the broad basis that sufficient evidence was provided to the First-tier Tribunal to establish the First Appellant's continuous five-year residence in the United Kingdom as a qualified person. The First Appellant asserts that she has been in the United Kingdom from 2009 to the present date and has been employed or self-employed from 2 February 2010 to the present date. The grounds of appeal did not specifically identify the evidence relied upon nor directly address the gaps identified by the First-tier Tribunal.

4. Neither the decision of the First-tier Tribunal, the grounds of appeal, nor the oral submissions before me dealt separately with the decisions in relation to the Second and Third Appellants, both of whom are minors and whose applications appear to be entirely reliant upon the outcome of the First Appellant's application and appeal.

Findings and reasons

5. The First-tier Tribunal Judge found that the First Appellant started work on 9 February 2010 with the [M] Hotel and worked there until 9 November 2011. He was also satisfied that she worked from 9 February 2012 to 24 May 2013 for a care home called [N]. He found there was evidence that the First Appellant had given birth to the Third Appellant on 19 February 2011 in the UK, but had failed to provide evidence of maternity leave with her third child, who was born in 2015. There was evidence that the First Appellant then became self-employed in August 2016.

6. The findings of the First-tier Tribunal are that in the period 2010 to 2018 there were significant gaps in the evidence to show that the First Appellant had been exercising treaty rights as a qualified person in the United Kingdom. First, there was no evidence of the First Appellant being a work seeker between November 2011 and February 2012; secondly, there was

no evidence of what she did between May 2013 and August 2016. The conclusion was that she needed to make a fresh application with a complete chain of evidence.

7. The following evidence was submitted but not given weight by the First-tier Tribunal: a P45 that the First Appellant left work on 1 May 2013; a letter to the First Appellant saying she was not entitled to jobseekers allowance due to insufficient national insurance contributions in March/April 2013; a national insurance letter indicating that class 2 (self-employed) national insurance contributions were made for the year April 2014 to April 2015; a copy of the tax return for the year April 2014 to April 2015 which indicates that the First Appellant worked cleaning houses on a self-employed basis from April 2014 to April 2015; maternity allowance decision documents from the Department of Work and Pensions showing the First Appellant was in receipt of maternity allowance from 1 October 2015 to 29 June 2016; a tax return for April 2015 to April 2016 indicating self-employed work by the First Appellant cleaning houses from October 2015 to February 2017; a tax calculation letter for the tax year April 2016 to April 2017 indicating self-employed work cleaning and doing hairdressing for which no tax was due.

8. I find in accordance with the decision of the European Court of Justice in Saint Prix v SSWP C-507/12 that any gap between the First Appellant's employment with [M] Hotel and [N] care home is covered by the fact that she had given birth in February 2011 as she clearly was working prior and after the birth of the Third Appellant, and then had a break but resumed work within a year of the birth with the [N] care home. As a result, she has continuous employment from February 2010 until May 2013.

9. I find further that there is evidence of self-employment from April 2014 to April 2017, including evidence of maternity allowance being received from October 2015 to June 2016 after the birth of the First Appellant's third child.

10. However, there remains a gap in the evidence of being a qualified person from May 2013 to April 2014. The First Appellant states that she was a jobseeker during this period but there is no evidence of seeking employment during this time and the JSA letter from March/April 2013 predates this period. There is some evidence showing that the First Appellant was studying at the Isle of Wight college for at least part of this period, but it is accepted by her that there was no evidence of having comprehensive sickness insurance as required by regulation 6 of the Immigration (European Economic Area) Regulations 2016. As a result, there is insufficient evidence of the First Appellant exercising treaty rights/being a qualified person for a continuous period of 5 years prior to the date of decision, there being a gap between May 2013 and April 2014.

11. In the circumstances, although the First-tier Tribunal failed take into account all of the material evidence before it on behalf of the Appellants;

even taking that evidence at its highest, the failure is not a material error of law because it does not in any event show that the requirements of Regulation 15(1)(a) of the Immigration (European Economic Area) Regulations 2016 are met. The appeal must therefore be dismissed on the basis that there was no error of law capable of affecting the outcome of the appeals.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeals is therefore confirmed.

No anonymity directions are made.

Signed Date 22nd March 2019

Upper Tribunal Judge Jackson