



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/05411/2013

THE IMMIGRATION ACTS

Heard at Bradford  
on 21<sup>st</sup> August 2013

Determination Promulgated  
On 21<sup>st</sup> August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

M W M

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Mikolajczyk – sponsor in person.

For the Respondent: Mr Spence – Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Clapham promulgated on 13<sup>th</sup> May 2013. There were four linked appellants, all family members. The appeals of the first two appellants were allowed and those of the third and fourth appellants dismissed. This is an appeal against the decision

made in respect of the fourth appellant a Polish national born on the 1<sup>st</sup> January 2002.

2. All four appellants applied for a certificate recognising their right of permanent residence in the United Kingdom on the basis of being EEA nationals who have resided in this country in accordance with the Immigration (European Economic Area) Regulations 2006 (as amended) for a continuous period of five years.
3. In paragraph 8 of her determination the Judge finds:
  8. In relation to the children and in particular the second named appellant being [JJM], I have seen evidence that she has resided continuously in the United Kingdom for the relevant period. However, there is no such evidence for the third named appellant namely [PMM] who appears to be residing in Poland at present. Further in respect of [MWM] I have had sight of only one letter from St Mary's Catholic Primary School which does not demonstrate the relevant 5 year period.
4. Within the bundle of papers submitted by the sponsor to the First-tier Tribunal on 2<sup>nd</sup> February 2013, by recorded delivery, is a letter from St Mary's Catholic Primary School stating that MWM has been a pupil at that school since 8<sup>th</sup> April 2008. The letter is dated 6<sup>th</sup> December 2012 and so only confirmed four years eight months education in the United Kingdom, although by the date of the determination it would have been five years. What the Judge makes no reference of, however, is a second letter in the bundle (being the next letter in order), from St Joseph's Catholic Primary School confirming that MWM attended that school from 24<sup>th</sup> September 2007 to 7<sup>th</sup> February 2008. This evidence demonstrates that the total period in education was in excess of the five-year period that was of concern to the Judge. There is no reference to the document or explanation why the evidence was not considered. Failure to consider all available evidence is an error of law. In this appeal it is material as but for the alleged lack of evidence of this nature the appeal would have been allowed.
5. I set the determination aside. It was accepted by Mr Spence, on the basis of the evidence, that the appeal must be allowed. I do so. Even if the letter from St Joseph's had not been available one of the findings made by the Judge was that the first appellant, who is this appellant's mother, has been in the United Kingdom exercised treaty rights for a period of five years and so was entitled to permanent residence. This appellant is her dependent minor child and the Judge should of gone on to consider whether she was able to succeed under Regulation 7 as a dependent family member of the EEA national exercising treaty rights (her mother) and whether under Regulation 15 (1) (a) she was entitled to be recognised as having a right to permanent residence in any event. There is also jurisprudence relating to the position of an EEA national being

educated in a Member State which again was not considered by the Judge. I do not need to consider either of these issues in light of the fact the appeal succeeds in any event.

**Decision**

- 6. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

- 7. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such an order as this appellant is a minor child (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Fee Award.

Note: this is **not** part of the determination.

- 8. In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a whole fee award.

Reasons: the appellant has succeeded on appeal on the basis of documents made available to the First-tier Tribunal.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 21<sup>st</sup> August 2013