Upper Tribunal
Immigration and Asylum Chamber **Appeal Number: EA/01504/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 February 2018	**On 23 February 2018**

Before

Upper Tribunal Judge Kekić

Between

Modupe Olamide Laguda
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation
For the Appellant: Mr T Emezie, Solicitor, Matt Rowland Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

Determination and Reasons

Background

1. The appellant is a Nigerian national born on 28 April 1993. She seeks a permanent residence card as the extended family member of her EEA sponsor, her maternal aunt. The respondent refused her application on the basis that she had failed to establish that the EEA member had exercised treaty rights for a

period of five years in accordance with Regulation 15(1)(b). The respondent maintained that there was no evidence of her employment between 6 July 2008 and 12 November 2012 or of her incapacitation from 5 April 2014.

2. The appeal came before First-tier Tribunal Judge Bashir at a hearing at Bradford on 13 July 2017. the judge considered the evidence but concluded that the five year period selected by the appellant had not been covered by the documentary evidence. Accordingly, the appeal was dismissed.

3. In her grounds, the appellant argued that the respondent was satisfied that her sponsor was exercising treaty rights between 2008 and 2012 because she had been granted a residence card for that period. It was argued further that there was evidence before the judge to show that the sponsor had been exercising treaty rights from 2011 - 2016 and that the judge gave no weight to it and failed to note that a two tear gap in the five years was permitted. Permission to appeal was granted by First-tier Tribunal Judge Martins on 29 November 2017.

4. There has been no Rule 24 response from the respondent.

The hearing

5. I heard submissions from both parties at the hearing before me on 12 February 2018.

6. Mr Emezie submitted that evidence for 2008-2012 had been provided when the appellant made her application for a residence card so the respondent should not have required that evidence to be re-submitted. He maintained that there was documentary evidence for 2011-2016 before the First-tier Tribunal and if that was not the case, then it was now available. He submitted that a letter from the DWP dated 26 March 2014 was handed in at the hearing and it covered payments for the period until 15 September 2015. He submitted that even if there were gaps, there was discretion to disregard them.

7. In response, Mr Duffy criticized the appellant's bundle as unhelpful and containing much irrelevant information. He submitted that all the judge needed to see was evidence of economic activity and that was not present for the five year period. He pointed out that the judge made no reference to the production of a letter at the hearing. Mr Duffy submitted that the earlier grant of a residence card only demonstrated that treaty rights were being exercised at the date of the issue. He submitted that if evidence was being relied on, it should have

been produced. With respect to the issue of a permissible gap, he pointed out that the judge had in fact referred to this at paragraph 10 and that even with this gap, there still had to be evidence covering five years. Mr Duffy submitted that the determination was properly reasoned and that if the appellant had fresh material to rely on, she should make a fresh application. There had been no error of law.

8. Mr Emezie submitted that the appellant had gone to court to address the lack of evidence identified in the refusal letter. She dealt with that by way of oral evidence. He argued that had the judge wished to deal with a different period, the case should have been adjourned and further documentary evidence should have been requested.

9. That completed submissions. I then reserved my determination which I now give with reasons.

Findings and conclusions

10. I have carefully considered all the evidence before me and the submissions that have been made by both parties.

11. The issue before the First-tier Tribunal was a simple one; had the requirements of reg. 15 been met, that is to say had the appellant shown that her sponsor was a qualified person for a five year period.

12. The judge found that this had not been shown. The appellant argues that the evidence had been adduced.

13. First, I concur with Mr Duffy's view of the appellant's bundles. They have been poorly put together, the documents are not in any chronological order and there is no detailed schedule of the evidence. A number of the documents are unrelated to the issue to be determined. It has taken unnecessary time to go through all the documents. There is also duplication between the bundles.

14. Mr Emezie's submissions did not advance the appellant's case. He initially submitted that the appellant had adduced documentary evidence to address the shortfall in the evidence identified by the respondent in her decision letter and that there had been documentary evidence for 2011-2016 before the Tribunal. However, it then transpired that in fact the appellant had not fully done so but had maintained in oral evidence that the period had been covered. He also submitted that a letter from the DWP of 26 March 2014 had been handed in at the hearing but he was not the representative at that hearing, the document does not appear on the Tribunal file, it is not referred

to in the judge's determination, it is not referred to in the Record of Proceedings and there is no statement of truth from Counsel who represented the appellant to confirm that it had been adduced. What I see from the file, is that it was submitted after the hearing with the application for permission to appeal. It was not a document before the judge and the complaint that it was disregarded is wholly without merit.

15. Also without any merit is the complaint that the judge had no regard to the permissible gap of employment. That is wholly misleading as the judge plainly refers to this at paragraph 10 of the determination. The position is not that two years of a five year period can be discounted so that evidence of economic activity only has to be shown for three years, but that period of economic activity can be aggregated so that the five year period can be built up with gaps.

16. Mr Emezie argued that the judge should have adjourned the appeal hearing and asked for further documentary evidence if he was going to consider a different period to that considered by the respondent in her decision letter. This is a hopeless point. The appellant chose the five year period herself; it was put forward by Counsel at the hearing as 6 July 2011 - 6 July 2016 (at paragraph 9) and the judge proceeded to consider the appeal on that basis. It is worth mentioning that there was no attempt at the hearing to argue that there were any gaps in these five years. Indeed, the case was presented on the basis that there was evidence to cover economic activity for that period.

17. The submission that the respondent had been satisfied with a previous period of economic activity between 2008 and 2011 is not supported by any evidence. At best, it can be argued that when the residence card was issued in 2008, the respondent had been satisfied that the sponsor had been a qualified person. I fail to see how it demonstrates that the respondent was satisfied that the position would or did remain the same for the next five years. It was for the appellant to set out the relevant five years period and then to show that the evidence covered it. She had a further opportunity to adduce the required evidence at the hearing.

18. On that basis, the judge considered the available documentary evidence. His findings are set out at paragraphs 10-13 . He found that only a period of 39 months was covered by the evidence. There was no evidence for the period 25 April 2014 - 6 July 2016. Whilst evidence of later employment was submitted, that did not assist the judge in determining whether the chosen five year period was covered.

19. It follows that I conclude that the judge properly considered the evidence that had been adduced and that he made no errors of law in his examination of that material. As Mr Duffy submitted, if the appellant has fresh evidence she wishes to put forward, it is open to her to make a fresh application to the respondent with that evidence presented in an orderly and well detailed manner.

Decision

20. There are no error of law in the determination of the First-tier Tribunal Judge. The decision to dismiss the appeal stands.

Anonymity order

21. There has been no request for an anonymity order at any stage and I see no reason to make one.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

19 February 2018