



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/02311/2017  
EA/02789/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 22 January 2018

Decision & Reasons Promulgated  
On 19 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

PAULA ANDREA CORTES OSPINA  
JPLC  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In Person  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants have been granted permission to appeal the decision of First-tier Tribunal Judge Pacey dismissing their appeals against the decision of the respondent to refuse their application for leave to remain under the EEA Regulations. The respondent considered Regulations 19(1), 15(1) and 6(1) of the Immigration (EEA) Regulations 2006. Whilst it was acknowledged that the first appellant had been employed since 4 April 2014, the respondent said that she had failed to provide

sufficient evidence that she had been exercising treaty rights for five continuous years.

2. The respondent considered the second appellant's application in its own right as a qualified person. The respondent acknowledged that the second appellant has been attending primary school since 12 September 2011. However, the respondent said in order to qualify as a student, it was essential that evidence of comprehensive medical insurance is provided, with reference to 6(1). As he had failed to provide such evidence, he did not qualify for permanent residence in his own right.
3. The appellants are a mother and a minor son and both are citizens of Spain. The first appellant was born on 23 September 1988. The second appellant was born on 6 March 2007.
4. On 17 December 2016 the first appellant applied for a document certifying permanent residence as a confirmation of a right to reside in the United Kingdom. It was acknowledged by the respondent that the first appellant was currently employed and had been since 7 April 2014 with employer Pret A Manger. However, it was said that she failed to provide sufficient evidence to demonstrate that she has been exercising treaty rights for five continuous years. No evidence provided prior to 2014 exhibited that she had been residing in the UK in accordance with the Regulations. Her application was therefore refused under Regulation 15(1)(a) and 6(1) of the Immigration (EEA) Regulations 2016.
5. With reference to the second appellant's application, the respondent said he had applied as an EEA national family member of the first appellant. Because the first appellant had failed to provide sufficient evidence of employment over a continuous period of five years in accordance with the Regulations, the respondent could not issue a document certifying permanent residence when relying upon his sponsor.
6. It was upon this basis that the respondent decided to consider him in his own right as a qualified person and acknowledged that he had been attending primary school since 12 September 2011 and therefore in order to qualify as a student it was essential that evidence of comprehensive medical insurance is provided, with reference to Regulation 6(1). As there was no such evidence the respondent found that he did not qualify for permanent residence in his own right.
7. The judge at paragraph 10 listed the documentary evidence that was before her. These were HMRC tax credits, P60s and an HMRC concerning jobseeker's allowance stating the benefit ceased on 16 July 2013 and a letter referring to JSA being paid from 29 May 2013. The judge noted that an earlier letter was dated 30 October 2012.
8. At paragraph 11 the judge said that a payslip from G S recorded that her pay in the year to date had been £8814.64. Her gross pay for January 2012 was £833. The judge found it was reasonable to deduce that the first appellant must have been employed from April 2011. The conclusion was fortified by the fact that her P60 for that year showed total earnings in the year of £11,091.04.

9. The judge also noted at paragraph 15 that there was a letter from MITIE dated 11 February 2010 confirmed that the first appellant began working for them on 1 February 2010.
10. The judge said at paragraph 16 that accepting from all the documents before her, which came from various independent and unconnected public bodies (the local council, HMRC and Guy's Hospital) and her bank, together with her payslips, that the appellants have been in the UK since at least February 2010. She made her current application on 17 December 2016. The judge therefore found that at the date of her application and hence the date of decision, the first appellant had been in the UK for five years, as a qualified person.
11. Ms Holmes did not dispute this decision. Indeed, she accepted that even though the respondent did not accept that the first appellant was a qualified person as a worker, it was in the light of evidence surrounding her employment that the judge found that the first appellant was a qualified person.
12. In the light of the judge's finding that the first appellant was a qualified person under the EEA Regulations, I find that there was no requirement for the second appellant, the minor child of his mother, the first appellant to provide evidence of comprehensive insurance. Consequently, I find that the judge erred in law that he needed to provide such evidence.
13. The judge relied on two cases to find that the second appellant must be covered by comprehensive sickness insurance. I was unable to locate these cases in the law reports.
14. In the light of the judge's findings, I find that the judge's decision cannot stand.
15. I set it aside and remake it.
16. For the reasons given above, the appeals of the appellants are allowed.

No anonymity direction is made.

Signed

Date: 15 February 2018

Deputy Upper Tribunal Judge Eshun