



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07819/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 April 2018

Decision & Reasons Promulgated
On 3 May 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ANIKO PINTZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: none

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal James (the judge), promulgated on 15 November 2017, in which he dismissed the appellant's appeal against the respondent's decision dated 29 July 2017 refusing to issue her a registration certificate as confirmation of her right to reside in the UK as a qualified person under the Immigration (European Economic Area) Regulations 2016.
2. The appellant is a national of Hungary, date of birth 11 January 1975. She maintains that she has lived and worked in the UK since 2006 and is married to a British citizen. She maintains that she made an application for a 'residency card' on 21 April 2017. A copy of this application has not been provided. It is not however disputed that an application for a document confirming her right of

residence as a qualified person was made. What is unclear is whether this was an application for a document confirming a right of permanent residence, or only seeking confirming of a right of residence as a Qualified Person.

3. The application was refused on the basis that the appellant failed to provide evidence that she was a Qualified Person. The appellant lodged an appeal against this decision but elected to have the appeal determined on the papers without an oral hearing. The judge noted the assertion in the Notice of Appeal that the appellant was attaching invoices and bank account statements, but that there was no such documentation before him. The judge noted that there were no bundles of documents from either the appellant or the respondent. On the basis that there was no evidence before him to support the appellant's appeal, the judge dismissed the appeal.
4. In granting permission to appeal to the Upper Tribunal, Judge of the First-tier Tribunal C A Parker noted that a bank statement and invoices were in fact attached to the appeal notice.
5. At the 'error of law' hearing I confirmed with Mr Bramble, having carefully considered the appellant's appeal form, that it did contain a Barclay's Bank statement in the appellant's name covering the period 25 January 2017 to 10 March 2017 and indicating deposits from several dental practices. Also attached was an invoice in respect of the appellant's self-employment as a freelance dental nurse. The documents were attached to a general bundle date stamped by the Arnhem Support Centre on 8 August 2017, and which indicated that it contained enclosures consisting of 2 pages of bank statements and 3 pages of invoices.
6. It is unclear to me why the judge was not aware of these documents. It may be that, through administrative delay, they were not actually attached to the tribunal until after the appeal was considered by the judge. I note that the appellant wrote to the Home Office on 5 October 2017 indicating that she had changed to her married name and that she had also informed the Tribunal Services of this change. It may be that, due to the change of names, the relevant documentation was not attached to the file. Be that as it may, it is apparent that the judge did not consider material evidence when he made his decision. Although the judge may well be entirely blameless for this, there has clearly been a procedural impropriety sufficient to render the judge's decision unsafe.
7. Having identified a material error of law I set aside the First-tier Tribunal's decision and proceed to remake the decision.
8. I granted permission to the appellant to adduce further documentary evidence. She produced a number of further invoices covering March and April 2017 in respect of her self-employment as a freelance dental nurse. She additionally provided an extract from the Hungarian Register of Marriages confirming her marriage to Anthony Sidney Wilkin, and a council tax bill dated 8 March 2017

addressed to both the appellant and Mr Wilkin. The appellant additionally produced a letter from HMRC dated 31 May 2017 confirming that she was registered as a Self Employed Dental Nurse from 20 October 2016. Also provided was a further bank account document relating to the appellant and indicating further deposits into her bank account from several dental practices between 10 March 2017 and 30 April 2017. Finally, the appellant provided a Self Assessment Tax Calculation for 2016-17, dated 2 November 2017, indicating that her total income received was 19, 872 for the tax year ending 5 April 2017.

9. In oral evidence the appellant confirmed that she was no longer self-employed but worked, from October 2017, for an insurance company in Hayward Heath as a Portfolio Manager. She additionally confirmed that she had been employed in the UK since her arrival in 2006 and indicated that she could provide documentary evidence after the hearing. I indicated to both parties that I was prepared to receive further evidence before writing my decision. I indicated that I would allow the appeal but that I would wait until I received the further evidence before promulgating my decision.
10. After the hearing I received a number of P60 End of Year Certificates relating to the appellant for the tax years ending 5 April 2016, 5 April 2015, 5 April 2014 and 5 April 2012. I was additionally provided with a HMRC Tax Calculation for the year 2012-13 relating to a tax repayment for the year to 5 April 2013, which indicated that, for the tax year 2012-13 the appellant had a PAYE income of £24,884. I was also provided with further HMRC commence relating to the appellant's income for the tax years 2008-9, 2007-8, 2006-7. I was also provided with a Barclay's bank account in the appellant's married name confirming wage deposits from the Markerstudy Group covering the period 23 June 2017 to 23 March 2018, and a contract of employment in relation to the appellant issued by the Markerstudy Group.
11. Mr Bramble provided a written response to the further evidence indicating the respondent's satisfaction that the appellant's evidence showed she is exercising treaty rights and meets the requirements of regulation 6 of the Immigration (European Economic Area) Regulations 2016, and that she therefore qualifies for a registration certificate. Mr Bramble was additionally satisfied, having regard to the further evidence provided by the appellant, that she was a "qualified person" for the period 5 April 2013 to 5 April 2016, and that, based on a combination of bank transactions, a contract of employment and payslips, that the appellant was also a qualified person for the period June 2017 to 4 April 2018. Although expressing some concern in respect of the period 6 April 2016 to 31 May 2017, Mr Bramble indicated that this may not be an issue as this period was covered by the documentary evidence considered at the hearing. The documentary evidence identified in paragraph 8 *supra* does indeed confirm the appellant's employment for most of the period April 2016 to the end of May 2017. In the circumstances I am satisfied that the appellant has been exercising her Treaty rights for a period of 5 continuous years and that she has achieved permanent residence.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I remake the decision allowing the appeal under the Immigration (European Economic Area) Regulations 2016.



Signed
Upper Tribunal Judge Blum

Date

4 April 2018