



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: EA/09598/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 4 October 2018

Decision and Reasons Promulgated
On: 17 October 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MS KAJIE MARYAM CEESAY
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Y Darboe, Toltops Solicitors

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Gambia, born on 19 November 1979. She appeals with permission against the decision of the First-tier Tribunal promulgated on 2 July 2018 dismissing her application for a permanent residence card as a person with a retained right of residence under the Immigration (EEA) Regulations 2016.
2. Mr Darboe, who represented the appellant before the First-tier Tribunal, submitted that the Judge erred by misconstruing Regulation 10(5) and 10(6) of the 2016 Regulations as limiting the appellant's ability to retain a right of residence on her ex-husband's attainment of a permanent right of residence.

3. She qualifies for a retained right of residence under Regulation 10(5) and (6) if she can prove that she was married to an EEA national which lasted for three years, and on the date of their divorce her ex-husband was exercising Treaty rights in the UK and that she is also exercising Treaty rights in the UK as an EEA national.
4. It is also contended that the Judge relied heavily on the respondent's contention, cited at [13] that the appellant failed to provide evidence that her ex-husband was in employment between 2011 and 2013.
5. Although it is conceded that this period was relevant to the appellant's five years' continuous residence consideration, at the date of the respondent's consideration of the appellant's application, this was not significant and relevant to the Judge's considerations as at the date of appeal, as the appellant can rely on any five year continuous period between 2011 and 2018 to qualify for permanent residence.
6. He submitted that the appellant's ex-husband was pursuing a degree course at university where he obtained a Bachelor's degree in 2016. Further, he had the relevant comprehensive health insurance cover. That period amounts to continuous residence of five years in accordance with the regulations, which is sufficient to meet the permanent residence requirements under Regulation 15(1)(f).
7. In further written submissions, Mr Darboe submitted that the period spent after she retained the right of residence, namely, 2016 to June 2018, should be counted in addition to the period spent by her former spouse as a student, being from 2013 until 2016 in order to meet the five years' continuous residence for permanent residence under Regulation 15(1)(f) of the 2016 Regulations.
8. On behalf of the respondent, Ms Pal submitted that the issue was whether the appellant's ex-spouse exercised Treaty rights between 2012 until 2016.
9. She referred to the evidence relating to his education over that period. He attended Harrow College and was awarded a certificate relating to the completion of five modules. This was awarded on 20 July 2013. He was at the Moulton College attending a course in Agriculture for the period 2013 to 2015. He was awarded a BSc (Hons) in Land Management by the University of Northampton dated 6 September 2016 (pages 17-18).
10. Further, the appellant was granted a five year residence card as a family member on 31 May 2012. The marriage broke down in 2014.
11. Finally, there was a confirmation of medical insurance cover issued to her ex-husband on 2 April 2018, confirming that the cover available to him is valid worldwide, which was to expire on 31 December 2018 and be due for renewal on 1 January 2019.
12. In the circumstances, Ms Pal conceded that the appellant's former spouse had been exercising Treaty rights for the required period.

Assessment

13. I find that Ms Pals concession was properly made. The appellant's former spouse has pursued education resulting finally in the award of a Bachelor's degree in 2016. He has also had comprehensive health insurance cover.
14. Having regard to the evidence as a whole, I find that the appellant has discharged the burden of proof that she meets the requirements for the issue of a permanent residence card.

Notice of Decision

The appeal is allowed.

Anonymity direction not made.

Signed

Date: 12 October 2018

Deputy Upper Tribunal Judge C R Mailer