



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00103/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 5 September 2019

Decision & Reasons Promulgated
On 11 September 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MARTINA ZIEMAN-ROTH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Germany who was born on 18 February 1959. On 2 October 2018, the appellant applied for a certificate of permanent residence under reg 15 of the Immigration (EEA) Regulations 2016 (SI 2016/1052 as amended). The basis of her application was that she had resided in the UK with her husband, also a German citizen, for a period of at least 5 years and he was a 'qualified person'. On 7 December 2018, the Secretary of State refused her application.
2. The appellant appealed to the First-tier Tribunal ("FtT"). The appeal was dealt with by Judge Suffield-Thompson on 26 February 2019. She determined the appeal 'on


the papers' as the appellant had not requested a hearing. The judge was not satisfied, on what she described as the "quite scant" evidence", that the appellant had established her claimed period of residence or that her husband had worked in the UK, as a doctor, for the period relied upon.

3. The appellant sought permission to appeal to the Upper Tribunal which was granted by the FtT (Judge Scott-Baker) on 23 April 2019.
4. At the hearing before me, the appellant appeared in person and the respondent was represented by Mr Howells.
5. The basis of the appellant's appeal is that the judge failed to take into account a bundle of documents sent by the appellant to the FtT under cover of a letter dated 14 February 2019. The appellant helpfully provided a composite bundle in four parts. Part 3 contained the documents which she relied upon as having been sent to the FtT on 14 February 20-19 but not considered by the judge.
6. Having considered the documents in the Tribunal's file, in particular the bundle of documents relied upon by the appellant under cover of a letter of 14 February 2019, Mr Howells accepted this bundle had been received by the FtT on 19 February 2019 prior to the judge's decision on 26 February 2019 but the documents had not reached the judge prior to her decision, and had not, as a result, been taken into account by the judge. Mr Howells accepted that this was a procedural error amounting to a legal error and the judge's decision should be set aside, the appeal re-heard and a fresh decision made.
7. I accept Mr Howells's concession: it is correct. Albeit through no fault of her own, the judge failed to take into account the documents submitted by the appellant under cover of her letter of 14 February 2019. Those were received by the FtT prior to the judge's decision but were not, for whatever reason, linked with the judge's file prior to her decision being made 'on the papers'. That was a procedural error which vitiates the judge's decision and I set it aside.

Decision

8. The FtT's decision involved the making of an error of law. It cannot stand and is set aside.
9. Given that the appellant has not, in effect, had a fair first hearing, the appropriate disposal of the appeal is to remit it to the FtT. In addition, there is further evidence which the appellant may wish to rely upon in support of her claim. I was also told that the appellant's husband has recently been granted a certificate of permanent residence. Accordingly the appeal is remitted to the FtT for a *de novo* re-hearing before a judge other than Judge Suffield-Thompson.

Signed



A Grubb
Judge of the Upper Tribunal

5 September 2019