



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00628/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 28 September 2018**

**Decision & Reasons Promulgated
On 1 February 2019**

Before

**UPPER TRIBUNAL JUDGE McWILLIAM
DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR MARCIN JAKUB MASLOWSKI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Poland. In a decision sent on 27 April 2017 Judge Kaler of the First-tier Tribunal dismissed the appellant's appeal against the decision made by the respondent on 30 December 2016 refusing to issue a document, certifying permanent residence as confirmation of the appellant's right of residence in the UK. The judge accepted that there was evidence that the appellant had been economically active in the UK from October 2004 and had had several employers including Abacus Transport, NFT Transport, Monarch Personnel and GB Oils. However, the judge does not appear to have accepted that

these employments formed part of a pattern of continuous employment. The judge only accepted that the appellant was economically active between:

4/10/2004 - 30/12/2005 (paragraph 20; 21)
April 2006 - April 2007 (paragraph 23)
9/11/2011 - 25/10/2012 (paragraph 15)
14/12/2013 - 12/4/2013 (paragraph 16)
17/5/2013 - 18/7/2013 (paragraph 17)

2. The judge commenced his assessment at paragraph 24:

“Thus far, I accept that the Appellant was economically active in the UK from 04/10/2004 to 30/12/2005. I am satisfied that he was employed again for one year until 2007 with NFT distribution. The Appellant has not provided a contract of employment, wage slips, bank statements or tax documents that would establish he has been working again until January 2011. Thereafter, it has been established that he was employed from January 2011 until 18 July 2013. The evidence does not point to the Appellant being economically active for a continuous period of 5 years and so he does not qualify for a permanent residence card on the basis of his employment history.”

3. The judge then turned his attention to the appellant’s claim that he has been economically active as a self-employed person since 2013. At paragraph 25 he concluded:

“The Appellant claims to be self-employed. He has not produced any accounts or business bank statements. He may have established a company but the evidence of economic activity is woefully lacking. I do not find that he has established he has been economically active as a self-employed person since 2013.”

4. The appellant’s grounds stated that the judge had overlooked evidence placed before him, stating that the appellant had set up a limited company, Dromader Ltd, from 27 December 2013 until 7 November 2017. This evidence included a letter from the appellant’s accountants RACS PSC, circa June 2017 stating that the appellant is the sole director of Dromader Ltd and then citing figures to show that the company is solvent and continues to trade profitably. There was also a number of remittances to the appellant for driver support services at numerous dates in 2015.
5. At a hearing that took place before us on 28 September 2018 Mr Lindsay for the respondent accepted that the judge had not taken account of the evidence relating to the appellant’s self-employment but submitted that this error was not material because the appellant could still not show that he had five years of continuous economic activity. We indicated that we were satisfied that the judge had erred in failing to take account of the self-employment evidence and that this was a material error because it could not be excluded that if the judge had taken into account this

evidence, he may have concluded there was continuous economic activity for a five year period.

6. Having heard submissions we gave oral directions which were subsequently confirmed in writing on 29 September 2018 that the appellant produce further evidence in support of his claim to have been self-employed as a sole trader from 27 December 2013 to 7 November 2017 and that the respondent produce any further evidence by the same date.
7. In response to our directions the appellant produced an HMRC letter dated 1 November 2018 giving details of his employment from 2004/5 to 2014/15 tax year, showing employment, tax and NI.

Our Decision

8. As indicated at the hearing and explained above, we are satisfied that the FtT Judge materially erred in law.
9. In light of the further evidence now available to us following our directions, we are satisfied that the appellant has established he has completed five years of continuous economic activity amounting to exercise of Treaty rights. In light of the further evidence, we are able to find as follows:
 - 1) In relation to the appellant's employment history, he had been employed in every tax year since 2004/5 until 2012/13. In each of these years the amount of earnings was significant and taken cumulatively they demonstrate that the appellant has had a continuous connection with the labour market. Whatever gaps between one employment and another, they were not significant enough to cause him to have ceased to have the status of a worker under the EEA Regulations. That means he has been able to show five years' continuous employment even before he began self-employment in 2013.
 - 2) Even if the position was that in order to show five years' continuous economic activity the appellant had to show that he had been self-employed since December 2013 - November 2017 (and that there was no significant break until his last period of employment and commencement of his self-employment), we are satisfied he has demonstrated that.

First of all, the HMRC letter of 1 November 2018 states that in 2013/14 he had earnings from two employments (Butlers Fuels Ltd and Certas Energy UK Limited) on which he paid tax and in addition he paid 41 self-employment contributions. In 2014/15 his company Dromader Ltd is listed and 53 self-employment contributions are listed. There is also an earlier letter from HMRC dated 25 September 2018 showing sources of income from Dromader Ltd for tax years 2014/15, 2015/16 and 2016/17.

10. In light of this further evidence, the appellant has shown continuous economic activity after December 2013 until the end of tax year 2016/17 (there is also further evidence that in tax year 2017/18 he had sources of income from A Clarke & Co (Smethwick Ltd) and Dromader Ltd). He has also shown that any gap between the last period of employment in the tax year 2013/14 and the commencement of his self-employment cannot have been of such significance as to break his connection with the labour market.
11. Even if, therefore, the appellant needed to establish self-employment for December 2013 onwards in order to demonstrate five years' continuous exercise of Treaty rights, we are satisfied he has done so.
12. Accordingly he has established to our satisfaction that he has had more than five years' continuous economic activity first as a worker and more recently as a self-employed person. Accordingly, he is entitled to succeed in his appeal.

No anonymity direction is made.

Signed

Date: 12 January 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'S' at the end.

Dr H H Storey
Judge of the Upper Tribunal