



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/06301/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 24 May 2019**

**Decision & Reasons Promulgated
On 28 May 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**MRS ROSHANBIBI HUSEINBHAI KADIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge I F Taylor, promulgated on 15 May 2018. Permission to appeal was granted by First-tier Tribunal Judge O'Callaghan on 12 July 2018.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. The appellant was issued with a Family Permit and entered the United Kingdom on 19 May 2011 as a member of her mother-in-law's (hereinafter referred to as the sponsor) household. The sponsor is a Portuguese national. On 22 May 2012 the appellant was issued with a five-year residence card as the extended family member of her sponsor. On 29 December 2016, the appellant applied for a permanent residence card as the family member of her sponsor. That application was refused in a decision made on 27 June 2017 because the Secretary of State was not satisfied that the appellant was dependent upon her sponsor nor that she had resided with her for a continuous period of five years.

The hearing before the First-tier Tribunal

4. The First-tier Tribunal Judge accepted that the appellant resided with her sponsor for a continuous period of five years for detailed reasons set out in the decision. Nonetheless, he dismissed the appeal because there was no evidence that the sponsor financially provided for the appellant's essential living requirements.

The grounds of appeal

5. The grounds of appeal argued that the appellant was entitled to a permanent residence card as long as she continued to be a member of her sponsor's household.

6. Permission to appeal was granted on the following basis:

"It is arguable that the Judge only considered the issue of financial dependency and did not consider the alternative of the Appellant having remained in the household of her Sponsor during the requisite five-year period."

The hearing

7. Prior to the hearing, the appellant's solicitors wrote to request that the appeal be determined on the papers. The matter remained listed in order to provide the respondent the opportunity to make oral submissions.
8. On 23 May 2019, Mr Whitwell emailed the Upper Tribunal to state that the First-tier Tribunal judge erred as contended in the grounds of appeal and that the appeal was not resisted.
9. At the hearing, Mr Whitwell reiterated the contents of the email and invited me to remake the decision, allowing the appeal, which I had no hesitation in doing.

Decision on error of law

10. The First-tier Tribunal found at [14] that the appellant did “*reside with her EEA national for a continuous period of five years.*” The appeal was nonetheless dismissed because the judge misdirected himself in finding that the appellant had not shown she was dependent upon the EEA sponsor. On the uncontested findings of the First-tier Tribunal it is obvious that the appellant met the requirements of Regulation 15(1)(b) of the Immigration (European Economic Area) Regulation 2016) and had acquired the right to reside in the United Kingdom permanently.

Remaking

11. As the appellant met the requirements of Regulation 15(1)(b), I remake the decision by allowing her appeal.

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

I substitute a decision allowing the appeal on the basis that the appellant established that she was entitled to be issued with a permanent residence card.

No application for anonymity was made and I saw no reason to make such a direction.

Notice of Decision

The appeal is allowed.

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason. The appellant demonstrated that she met the requirements of the Regulations.

Signed

Date:

Upper Tribunal Judge Kamara