Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07502/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 November 2019	**On 2 December 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MISS HELIA MARIA DE SOUZA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Norman instructed by Sterling & Law Associates
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Brewer promulgated on 1 July 2019, dismissing her appeal against the decision of the Secretary of State, dated 2 October 2018, to refuse her application made on 7 May 2018 for an EEA permanent residence card as

the former family member of an EEA national exercising treaty rights in the UK who has retained a right of residence following the end of her sponsoring son's marriage to the EEA national, a Miss Lobo.

2. First-tier Tribunal Judge Hollingworth granted permission to appeal on 2 September 2019 stating that it was arguable that a wider interpretation of and a purposive approach to the relevant Regulations under the Immigration (EEA) Regulations 2016 should have been adopted.

3. For the reasons set out below I find no error of law in the making of the decision of the First-tier Tribunal such as to require the decision to be set aside.

4. The relevant background can be summarised as follows. The appellant, a Brazilian national, first arrived in the UK in June of 2014 on a six month visit visa. She was then permitted to remain with leave as a student. Later she left the UK and re-entered on a six month visit visa in 2008, to live with her Brazilian son and his wife. In May of 2013 she was granted an EEA residence card valid to May 2018 as the dependent family member of her EEA national daughter-in-law. The marriage of her son to the EEA national apparently took place in 2004 but broke down in July of 2017 when the parties separated. The divorce was finalised in February of 2016. After her son's separation from the EEA national the appellant continued to reside with her son but not with the EEA national. It is not asserted that she remained dependent on the EEA national daughter-in-law.

5. The application made in May of 2018 for a permanent residence card was refused following consideration of Regulations 15(1)(b) and 7(1)(c) of the Immigration (EEA) Regulations 2016, on the basis that she failed to demonstrate that she had remained the dependent ascendant relative of the EEA national for a continuous period of five years as required by Regulation 7(1)(c). As the residence card was issued in May of 2013 and the appellant ceased residing with and being dependent on the EEA national from 2014, five years had not elapsed.

6. At the outset of the hearing Ms Norman sought leave to add a further ground of appeal, one which had been raised, she claims, before the First-tier Tribunal. She referred me to paragraphs 13 to 14 of the grounds of appeal to the First-tier Tribunal. She says the judge did not deal with this issue, which was that was that both the appellant and her son had already acquired a permanent right of residence. I was referred to a letter of 28 December 2018 from the daughter-in-law confirming that the appellant had lived with them from December 2008 to July 2014, the date of separation. She had provided the appellant with financial support, food and accommodation.

7. I am not satisfied it is necessary to grant permission in the interests of justice to add this further ground, a ground which was not pleaded in the grounds of appeal to the Upper Tribunal and a ground on which permission

was not considered or granted, however the five year issue is part and parcel of the overall considerations. In particular, Ms Norman submitted in her arguments before me that the judge erred by looking at whether the appellant had acquired five years as a family member of her daughter-in-law from the date of the issue of the residence card in 2013 but did not look at whether she had already acquired or accumulated five years relevant residence.

8. In the course of submissions, I was referred to Regulation 10(5). Ms Norman's argument was that this should be read purposively so as to include family members. However, as set out below, it is quite clear that that is not the way in which the Regulation is drafted.

9. Assuming that the appellant had resided with her daughter-in-law since December of 2008 the argument is that the necessary period was complete in December 2013, in other words before the breakdown of the marriage the following year. Judge Brewer concluded that the appellant had not retained a right of residence as she had not resided with the EEA national "in accordance with the Regulations" for a continuous period of five years. At the date of the application she could not be a dependent direct relative in the ascending line of the EEA national because she and her son had separated from the household of the EEA national before the date of the application.

10. The grounds of appeal to the Upper Tribunal focus on what in effect is a misinterpretation of the Regulations and in particular Regulation 10(5). Regulation 10(5) addresses the issue of a family member who has retained the right of residence. However, to meet the condition the person "A" must have ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of "A". The other provisions are that "A" must be residing in the UK in accordance with the Regulations at the date of termination of marriage and that the marriage or civil partnership must have lasted for at least three years, during which time the parties to the relationship had resided in the UK for at least one year.

11. Further, the condition under Regulation 10(6) must be met. This is that:-

    (a) the person is not an EEA national but would if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under Regulation 6; or

    (b) is a family member of a person who falls within paragraph 10(6)(a).

12. The difficulty for the appellant's argument in relation to Regulation 10 is that it is clear that it is the termination of the marriage or civil partnership of the person "A" which is required. The appellant cannot be the person "A" as Regulation 10(5) makes clear that it applies only to a person whose own marriage to an EEA national has terminated. Neither did she cease to be a family member of the EEA national on the termination of the

marriage; she ceased to be a family member when her son's relationship with the EEA national broke up in 2014. Neither was there evidence to show that she herself was a worker or self-sufficient person etc. under Regulation 10(6).

13. Neither has it been shown that the EEA national had herself a right of permanent residence on the termination of the marriage and in fact, it is not even clear that the former daughter-in-law was exercising treaty rights on the termination of the marriage in February of 2016.

14. At paragraph 15 of the decision the judge addressed the question whether the appellant was a family member who retained the right to residence and the judge stated:-

> "I simply had no evidence, not even a witness statement, from the appellant to evidence that she had resided in the United Kingdom with her EEA national sponsor, her daughter-in-law, in accordance with these Regulations for a continuous period of five years".

15. It follows there is no evidence of any of the relevant requirements of the Regulations have been met, least of all Regulation 10(5). Ms Norman's interpretation would require an entire reworking of the Regulation to bring the appellant within it's terms.

16. In the circumstances I am satisfied that the argument raised by Miss Norman cannot succeed and, on the evidence before the First-tier Tribunal, could not have succeeded. In the circumstances I find no error of law in this decision.

Decision

17. The making of the decision the First-tier Tribunal did not involve the making of an error on a point of law, such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

No anonymity direction is made.

Signed

Upper Tribunal Judge Pickup

Dated 12 November 2019

To the Respondent
Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed

Upper Tribunal Judge Pickup

Dated 12 November 2019