

**IN THE UPPER TRIBUNAL**

**Appeal No. CSUC/55/2019**

**ADMINISTRATIVE APPEALS CHAMBER**

**Before: Upper Tribunal Judge A I Poole QC**

The decision of the Upper Tribunal is **to allow the appeal**. The decision of the First-tier Tribunal made on 18 October 2018 at Dundee was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake the decision as follows:

At all times after 16 July 2014, the appellant has had a permanent right to reside in the United Kingdom. On 22 March 2018 she met the basic condition for Universal Credit at Section 4(1)(c) of the Welfare Reform Act 2012 of being in Great Britain.

The appellant's appeal against the decision of the Secretary of State for Work and Pensions dated 22 March 2018 is allowed. The case is remitted to the Secretary of State for Work and Pensions to determine whether the appellant satisfied the other conditions for entitlement to Universal Credit on that date.

**REASONS FOR DECISION**

1. This is a case about universal credit ("**UC**") and in particular whether the appellant (the "**claimant**") satisfied the conditions for entitlement. Section 3 of the Welfare Reform Act 2012 (the "**2012 Act**") provides that a person is entitled to UC if, among other things, they meet "basic conditions". One of the basic conditions, set out in Section 4(1)(c) of the 2012 Act, is that a person is in Great Britain, and there is a power to make regulations specifying when a person is or is not in Great Britain. The relevant regulation made under this power is Regulation 9 of the Universal Credit Regulations 2013 (the "**2013 Regulations**").

2. On 22 March 2018 the Secretary of State for Work and Pensions ("**SSWP**") decided that the claimant did not satisfy the right to reside element of the habitual residence test, was therefore not treated as in Great Britain, and did not satisfy the basic conditions for entitlement to UC. The claimant appealed to the First-tier Tribunal (the "**tribunal**"). On 25 October 2018, after a hearing on 18 October 2018, the tribunal confirmed the decision of the SSWP, finding that under Regulation 9 of the 2013 Regulations the claimant was treated as not being in Great Britain and therefore did not satisfy that basic condition for entitlement. Permission to appeal to the Upper Tribunal was granted by the judge of the tribunal on 22 January 2019.

3. In her response to the grounds of appeal in this case, the SSWP supports the appeal. She submits that the tribunal erred in law because it failed fully to consider whether the claimant had a permanent right of residence in the UK. While the SSWP agrees with the tribunal's findings that the claimant was not habitually resident on the bases covered by the tribunal, she submits that the tribunal failed fully to consider all applicable bases for habitual residence. She accepts that Regulation 9(3)(aa) of the 2013 Regulations has the effect that certain people who have an extended right of

residence in the UK are not to be treated as habitually resident. But the exclusion is restricted to people who are jobseekers or their family members, and does not extend to people who otherwise have rights to reside under Regulation 14 of the Immigration (European Economic Area) Regulations 2006 (the “**EEA Regulations**”). In this case, the claimant had been issued with a registration certificate on 16 July 2009, and accordingly, even though not married to her partner who was an EEA national working in the United Kingdom, fell to be treated as his family member under Regulation 7(3) of the EEA Regulations. As a result, she had an extended right of residence under Regulation 14(2) of the EEA Regulations. After exercising this extended right for a continuous period of five years, she qualified for a permanent right of residence under Regulation 15(1)(a) of the EEA Regulations (in this case on 16 July 2014). She therefore had a right to reside in the United Kingdom. As a result, she met the basic condition that she was in Great Britain.

4. Neither party has requested an oral hearing and I am satisfied I can determine the appeal fairly on the papers. The claimant has indicated that she would consent to a decision without reasons under Rule 40(3)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, if the SSWP supports the appeal and consents to a decision without reasons. The SSWP has supported the appeal but has not set out a position on whether reasons should be given or not.

5. Given the position of the parties, it is sufficient for me to say that I allow the appeal for the following reasons. The tribunal has erred in law in failing to find that the claimant met the basic condition for Universal Credit in Section 4(1)(c) of the 2012 Act. The claimant has a right to reside in Great Britain because, in the circumstances set out in paragraph 3 above, she has a permanent right of residence under Regulation 15(1)(a) of the EEA Regulations. Pursuant to Regulation 9(2) of the 2013 Regulations, and because she does not fall within any of the excluded categories in Regulation 9(3) (as more fully explained in paragraph 3 above), she can be treated as habitually resident in the United Kingdom. Regulation 9(1) therefore does not prevent her from being treated as in Great Britain for the purposes of determining whether she meets the basic condition in Section 4(1)(c) of the 2012 Act. I agree with the effect of the tribunal’s decision that the claimant does not fall within any of the categories in Regulation 9(4) of the 2013 Regulations, with the result that she does not fall to be treated as in Great Britain by that route (Regulation 9(4)(c) being restricted to persons with rights to reside under Regulation 15(1)(c), (d) and (e), but the relevant provision giving rise to the permanent right to reside in this case is Regulation 15(1)(a)). However, the situations listed in Regulation 9(4) are not the only bases on which a person may establish they are in Great Britain for the purposes of the basic condition in Section 4(1)(c) of the 2012 Act. On the facts of this case, the claimant has a right to reside. Regulation 9(2) has the effect that she is not prevented from being treated as habitually resident in the United Kingdom, and can therefore be treated as in Great Britain under Regulation 9(1) of the 2013 Regulations.

6. The decision is set aside. I remake the decision in the terms set out at the beginning of this decision, and remit it to the SSWP to decide if the other conditions for entitlement to UC were satisfied.

**Signed on the original  
on 6 June 2019**

**A I Poole QC  
Judge of the Upper Tribunal**