



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/10352/2014

THE IMMIGRATION ACTS

Heard at Glasgow  
On 15 August 2014

Determination Promulgated  
On 17 September 2014

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AGNEISZKA TATKA

Respondent

Representation:

For the Appellant: Mr K Young, Senior Presenting Officer  
For the Respondent: unrepresented the respondent appeared in person

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Raikes who for reasons given in her determination dated 23 April

2014 allowed the respondent's appeal under the Immigration (European Economic Area) Regulations 2006.

2. The respondent whom I shall refer to as the claimant is a national of Poland where she was born 26 February 1986. She applied to the Secretary of State on 13 January 2014 for recognition of her right to permanent residence in the United Kingdom under the Regulations based on her employment since 2 January 2009.
3. The Secretary of State refused the application because, as stated in the Reasons for Refusal Letter dated 14 February 2014,

“However you have failed to provide sufficient evidence to show that you were exercising treaty rights in the UK for five continuous years as a worker. Whilst there is no requirement to earn a certain level of income, the low earnings you are provided on you [sic] P60 certificates, suggest that you may not have been continuously exercising Treaty Rights in the UK for five continuous years as a worker during your five your qualifying period.”

4. Thus it was the continuity of the claimant’s employment that was at issue. She had provided evidence with her application of employment by five employers including
  - (1) TPS Fruit and Veg Limited between 25 June 2006 and 8 January 2010 (described as on and off seasonal work)
  - (2) Cinnamon at Home, 1.1.2009 to 1.1.2010
  - (3) Mr H Cox trading as Fife Arms Hotel, 08.05.2009 to 08.10.2009
  - (4) Mr Bruce and R Scott the Chemist and Coffee Shop 1 February 2011 to 30 November 2011.
  - (5) Mount West Abattis Mitred trading as Banff Springs Hotel, 1.02.2011 to date.
5. The judge directed herself correctly as to the burden and standard of proof as on the claimant and the relevant Regulation (reg. 15(1)(a)). She considered the evidence before her with evident care including the claimant’s passport, accession state worker registration card and accession state worker registration certificate as well as P60 certificates from 2009/10 to 20/12/2013. In addition the judge had before her a letter from the claimant’s employer, wage slips, bank statements and a registration certificate issued by the Home Office on 23 September 2010 as well as a letter from the claimant's sister dated 23 February 2014.
6. The judge reached her conclusion on the evidence in these terms:

“I have noted that whilst she accepts that she was receiving a relatively low income, this was due to only being able to access part-time employment. I have also noted however her bank account and the letter of support written by her sister. I therefore find, looking at the evidence as a whole and the absence of any requirement to demonstrate a certain level of income, that the appellant

was exercising treaty rights in the United Kingdom or a continuous period of five years.”

Thus the judge allowed the appeal.

7. The challenge by the SSHD is that in essence the evidence only showed at the very highest, four years of employment in the UK. The judge failed to provide adequate reasons. It was noted that the claimant was only able to access part-time employment but the judge had not explored the regularity of that employment and the possibility of periods of unemployment.
8. I heard submissions from Mr Young on behalf of the Secretary of State. The appellant was assisted by a Mr Mohammed Alauddin who holds a residence card as the claimant’s family member which was granted in November 2010. I gave him permission to speak on behalf of the claimant. This was after asking Mr Young why the Secretary of State was pursuing the appeal as evidently she was satisfied in November 2010 that the claimant was a qualified person for the purpose of the issue of the residence card.
9. Mr Young expanded on the arguments in the grounds and in essence maintained that there was insufficient material before the judge to support the conclusion reached. He complained that the judge had not made a finding as to when the claimant had started employment and argued there was no P60 for the 2008/2009 tax year. He identified a paucity of evidence for the employment with Fife Arms and Cinnamon with reference to a single payslip during the following tax year. The P60 for Cinnamon to 2009/2010 was unclear as to how long the claimant had been working for. The last payslip was for February 2013. However he acknowledged bank statements reflected the income from the employer to 31 December 2013.
10. Mr Alauddin explained that the wage slips for 2009 had been lost but said the claimant could rely on the registration scheme card dated 23 January 2009 referring to employment with Cinnamon At Home. He drew attention to the bank statement reflecting the employment closest to the date of application.
11. My conclusions are as follows. It is clear from the Secretary of State's decision that she has not challenged the fact of employment but whether it had been of a continuous nature. In my view the judge reached her conclusions without arguable error. The task before her was to decide on the balance of probabilities whether the claimant had been continuously employed as claimed and I am persuaded that based on the evidence her finding was one which she was entitled to reach. I consider there is force in Mr Alauddin’s point that the authorisation from the Secretary of State under the worker registration scheme which refers to a job start date of 2 January 2009 read with the letter from Mr Chowdhury trading as Cinnamon At Home was sufficient to show the fact of employment with that firm from the beginning of January 2009. The further evidence reflected in the P60 end of year certificate for 2009/2010 for that employment indicated that although the payment overall received was modest, it was sufficient.

12. As to the evidence of employment leading up to the date of application, the bank statements demonstrated as recently as 31 December 2013 a payment from Mount West Abattis of £502.89 on 31 December 2013.
13. The Reasons for Refusal Letter questioned the continuity of the claimant's employment in general terms without specific reference to any of the varying employments of which evidence had been provided. That was the case the claimant was required to meet and I am satisfied on the evidence that the judge reached a permissible conclusion on the evidence before her.
14. The grounds of challenge to the judge's decision do not persuade me that the evidence only showed four years of employment in the UK particularly in the light of the evidence in the bank statement for December 2013. I consider the judge gave adequate reasons for accepting the evidence before her including the letter from the claimant's sister.
15. In summary, therefore, the challenge is a disagreement rather than one which identifies error of law. This appeal is dismissed.

Signed

Date 16 September 2014

A handwritten signature in blue ink, appearing to read 'Dawson', with a horizontal line extending to the right.

Upper Tribunal Judge Dawson