



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

Appeal number: IA/13098/2014

THE IMMIGRATION ACTS

**Heard at Field House
On December 17, 2014**

**Decision & Reasons Promulgated
On December 22, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS KAROLINA MONIKA PAULSE
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)

For the Respondent: Mr Cutting (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born July 1, 1980 is a citizen of Poland. The appellant came to the United Kingdom on January 12, 2004 and began exercising treaty rights on June 7, 2005. She maintained that she continued to exercise that right continuously for five years save that there was a period when she

was not working due to pregnancy. On January 8, 2014 she applied for permanent residence. The respondent refused her application on February 25, 2014 as she was not satisfied the appellant had demonstrated she had been working throughout the required period.

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006 on March 14, 2014. On August 13, 2014 Judge of the First Tier Tribunal Broe (hereinafter referred to as the "FtTJ") heard her appeal. He allowed the appeal under the 2006 Regulations in a decision promulgated on September 16, 2014. On a side note her husband's appeal as a family dependant was also allowed.
4. The respondent lodged grounds of appeal on October 9, 2014 in respect of this appellant only. She submitted the FtTJ erred in allowing the appeal. On November 17, 2014 Judge of the First-tier Tribunal Grant granted permission to appeal finding it arguable the FtTJ may have erred by finding treaty rights were exercised throughout the relevant period.
5. The appellant was in attendance and was represented.

ERROR OF LAW SUBMISSIONS

6. Mr Duffy submitted that the main issue of this appeal was whether the appellant had provided satisfactory and adequate evidence to show she was exercising treaty rights. He submitted that the FtTJ had erred by making the finding she did because there was insufficient evidence put forward to show she was working on a self-employed basis between September 2007 and July 2010. There was evidence that no tax had been assessed as payable and there was clear evidence of non-payment by her of NI payments for the periods 2008 to 2010. There was a lack of evidence about monies from invoices matching payments in the bank account and he submitted the FtTJ had erred. He accepted it was arguable that being on maternity leave would not interfere with continuous period of exercising treaty rights.
7. Mr Cutting argued the FtTJ had considered all of the submitted invoices and had had the opportunity of viewing the appellant's full invoice books covering the whole period. It was submitted the bank statements showed credits and supported her claim she was working as claimed as a cleaner. Evidence of tax payments and NI liability was before the FtTJ. He accepted she did not work when she was on maternity leave but argued that the decision of Jessy Saint Prix v Secretary of State for Work and Pensions [2014] WLR(D) 275 confirmed that the United Government was wrong to find that a person who was not actually working when they were on maternity leave. He submitted the evidence showed that save for when she was off on maternity leave she was working for the relevant period.

ASSESSMENT OF ERROR OF LAW

8. There were two issues raised in the grounds of appeal and whilst they are distinct points they are nevertheless connected. In order for the appellant to meet the requirements of the Regulations for the purposes of showing she is entitled to permanent residence she would have to show that the period when she did not work during her pregnancy did not break the continuity of her status.
9. The first issue for me to consider is whether the appellant remained a qualifying person during the period of her maternity leave. The evidence before me suggests that she ceased working on October 15, 2009 and was then off work until July 14, 2010. The appellant has two children and the relevant child was born on January 11, 2010. UK legislation allows a person to take twelve months off work and as the appellant claimed to have worked until October 2009 she would be entitled to be off work until October 2010. For the purposes of this appeal I am only concerned with the period of absence until July 2010 as if she could prove five years continuous status as a worker then anything after that July 2010 date would be irrelevant.
10. The Court found in Jessy Saint Prix v Secretary of State for Work and Pensions [2014] WLR(D) 275 that an employed person was entitled to give up work both before she was due to give birth and remain off work in the aftermath of giving birth. I am satisfied for the purposes of maternity leave there is no distinction between someone employed and someone who is self-employed and Mr Duffy did not argue the time she took off for her pregnancy was unnecessary. I therefore find that the fact the appellant did not physically work between October 2009 and July 2010 does not interfere with her status as a worker under the 2006 Regulations.
11. Turning to the other ground the FtTJ had evidence of work (invoices), bank statements and tax calculations. He considered the evidence along with the letter of NI payments from HMRC. The only period where she did not pay NI was when she was on maternity leave and that was between part of 2009/2010 and 2010/2011. After that she returned to employment and paid Class 1 NI payments. There was evidence of monies being paid into her NatWest bank account up to October 2009. Maternity pay commenced on October 15, 2009 and continued to July 2010.
12. The FtTJ had regard to all of the written and oral evidence and concluded that the appellant was working. The Regulations do not state the level of income needed to be “economically active” but the evidence presented suggests she was paying into her account on a regular basis. Between June 2005 and 2007 she was employed at Starbucks and the respondent took no issue with her status. Her challenge related to the period when she worked as a cleaner.

13. The FtTJ was satisfied the appellant demonstrated she was active as a cleaner and working in compliance with the Regulations. Mr Duffy has not persuaded me that the FtTJ erred.

14. I find there is no error in law.

DECISION

15. There was no material error of law and I uphold the original decision.

16. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **December 17, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I uphold the original fee award decision. .

Signed:

Dated: **December 17, 2014**

Deputy Upper Tribunal Judge Alis