



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

Appeal Number: IA/15612/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 December 2014**

**Determination issued
on 9 December 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DESLAVA SEVDALINOVA ASENOVA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: No appearance

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bulgaria, born on 26 February 1987. She applied on 26 February 2013 for a document to certify a permanent right of residence in the UK. The respondent refused that application on 29 April 2013, stating:

In accordance with Regulation 15(1)(a) an EEA national who has resided in the UK in accordance with the Regulations for a continuous period of 5 years shall acquire a right to reside in the UK permanently.

... you state that you [have been] employed as a seasonal worker ... from 2007 to 2012. Continuity of residence means that you are allowed to be absent from the UK, your place of residence, for the following reasons:

- (a) periods of absence ... which should not exceed 6 months in total in any year;
- (b) periods of absence ... on military service; or

- (c) any one absence ... not exceeding 12 months for an important reason such as pregnancy and child birth, serious illness, study or vocational training or an overseas posting.

... your P60's ... [state your] address in Bulgaria. This means that you are not a resident of the UK but a resident of Bulgaria who has undertaken periods of absence from Bulgaria for the purposes of seasonal work. As you are not a resident of the UK you cannot be considered for permanent residence.

2. The appellant appealed to the First-tier Tribunal on the grounds that it was not her responsibility that her P60's showed her address in Bulgaria, and that she had provided bank account and other documents showing her address in the UK, on the farm where she worked. She had resided there for each of the years she had spent in the UK, and had not been absent for over 6 months in any year.
3. The appellant did not seek an oral hearing. Her case came before First-tier Tribunal Judge Myers who dismissed it by determination promulgated on 17 September 2013. At paragraph 10 the judge said that although the appellant was living and working in the UK she was not continuously resident because her permanent address as evidenced in her forms P60 remained in Bulgaria. The Seasonal Agricultural Worker's scheme in which she had taken part did not allow workers to bring their dependants. They lived in accommodation provided by the employer such as a caravan, dormitories or bunk houses. Although a SAWs worker could obtain their own accommodation if they wished, those were factors which indicated that they were not ordinarily resident.
4. The appellant sought permission to appeal to the Upper Tribunal on the grounds that she had not seen any rule that a SAWs worker could not be treated as a resident and that she had provided evidence to show that she did meet the terms of the Regulations.
5. On 3 October 2013 Designated Judge Peart granted permission to appeal, on the view that the appellant might be assisted by Regulation 3(2)(a) and by 2 cases cited in the grant of permission.
6. Regulation 3(2)(a) reflects the terms of point (a) in the refusal decision. (It is plain that (b) and (c) do not apply to this case.)
7. Unfortunately due to an administrative oversight there was some delay in listing case for hearing in the Upper Tribunal. There was no appearance by or communication from the appellant. (She might have been in Bulgaria since the notice of hearing was issued.)
8. I observed to Mr Mullen that on the face of the refusal letter there was no good reason to refuse the application in the first place. The appellant is not caught by any of the conditions regarding continuity of residence set out in Regulation 3 and replicated in the decision. Having a private address in Bulgaria is not inconsistent with being resident in the United Kingdom. Many people have more than one address in more than one country. The letter does not give an intelligible reason for refusing the

application. Nor does the First-tier Tribunal determination explain why a seasonal agricultural worker spending the greater part of each year in the UK may not be considered to be resident here.

9. Mr Mullen sought to persuade me that the appellant might be unable to meet the terms of the Regulations, including the definition of a worker, for other reasons which are not set out in the refusal decision. He said that since the case was not set down for an oral hearing in the First-tier Tribunal, the respondent has had no earlier opportunity to advance such a case.
10. I do not find that submission attractive. The time to explain clearly to the appellant why her application was refused was in the refusal decision. The respondent knew the appeals to the FtT and to the UT had been filed, so if it was right to raise further points at all, that could have been done at a much earlier date. It is rather late now.
11. The statements by the appellant in her grounds of appeal to the FtT and to the UT are all vouched by her documents. Looking at those documents, at Regulations 3 and 5 and at the refusal decision, I can find no sensible reason why the appellant should not be thought to have resided in the UK in accordance with the Regulations for a continuous period of 5 years from 2007 to 2012.
12. The determination of the First-tier Tribunal is **set aside**, and the following determination is substituted: the appeal, as originally brought to the First-tier Tribunal, is **allowed**.
13. No anonymity or fee order has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8 December 2013
Upper Tribunal Judge Macleman