



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number:
IA/50582/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2014**

**Decision and Reasons
promulgated
On 27 November 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Secretary of State for the Home Department
Appellant**

and

**Kamaljeet Kaur Mavi
(No anonymity order made)**

Respondent

Representation

For the Appellant: Ms. J. Isherwood, Home Office Presenting Officer.

For the Respondent: Mr. K. Alim of Counsel instructed by Yaqub & Co.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Pedro promulgated on 4 September 2014 allowing Ms Mavi's appeal against a decision dated 13 September 2013 to refuse

to issue her a permanent residence card as confirmation of a permanent right to reside in the UK.

2. Although before me the Secretary of State is the appellant and Ms Mavi is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Ms Mavi as the Appellant and the Secretary of State as the Respondent.

Background

3. The Appellant is a national of India born on 26 January 1974.
4. A detailed chronology of the Appellant's personal and immigration history is to be found at paragraph 10 of the determination of First-tier Tribunal Judge Plumtre in an earlier appeal (linked with similar appeals made by the Appellant's daughters) promulgated on 5 July 2010 (refs. IA/15757/2010, IA15761/2010 and IA/15764/2010). This chronology is a matter of record and known to the parties, and accordingly it is unnecessary to reproduce it here. What is particularly germane is that the previous appeal was against a decision of the Respondent dated 3 November 2009 to refuse to issue residence cards, and Judge Plumtre found that the Appellant had demonstrated that she had a retained right of residence in the UK pursuant to regulation 10(5) of the Immigration (European Economic Area) Regulations 2006. It was also observed by the Respondent's representative on that occasion that it would be open to the Appellant to apply for permanent residence when she had lived in the UK continuously for five years.
5. On 24 July 2013 the Appellant made an application for a permanent residence card as confirmation of a permanent right to reside in the UK. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 13 September 2013, and a Notice of Immigration Decision of the same date was served accordingly.
6. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the appeal for reasons set out in his determination.
7. The Respondent sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Pirota on 20 October 2014.
8. The Appellant has filed a Rule 24 response under cover of letter dated 5 November 2014 resisting the Respondent's challenge to the decision of the First-tier tribunal.

Consideration

9. The First-tier Tribunal Judge appropriately identified that the Appellant's application for a permanent residence card, and necessarily in turn her appeal, fell to be considered pursuant to the provisions of regulation 15(1)(f) of the 2006 Regulations.
10. In contrast, the Respondent's RFRL and Notice of Immigration Decision focused upon regulation 10(5), and the Notice also made reference to regulation 15A(2).
11. The Judge observed it to be a "*striking feature*" that the Respondent had made no reference to the determination of Judge Plumtre in which it had been concluded that the Appellant had retained a right of residence. Judge Pedro, in my judgement entirely appropriately, made reference to the decision in **Devaseelan** and indicated that the (unchallenged) determination of Judge Plumtre should be taken as his starting point.
12. Following some further references to passages in the decision of Judge Plumtre, Judge Pedro observed that the Appellant had been living in the UK since August 2007, and accordingly had been living in the UK with a retained right of residence in accordance with the 2006 Regulations for a continuous period of five years. In such circumstances the Judge was satisfied that the Appellant had demonstrated an entitlement to permanent residence pursuant to regulation 15(1)(f), and allowed the appeal accordingly.
13. In my judgement, in light of the unchallenged decision of Judge Plumtre, this was a straightforward matter – and indeed Judge Pedro dealt with it in a straightforward and succinct manner. It also seems to me that the case has been unnecessarily complicated by the Respondent's decision-maker's oversight in apparently disregarding the decision of Judge Plumtre.
14. The grounds in support of the application for permission to appeal again have their primary focus on regulation 10(5), and in particular the condition of 10(6) referenced in 10(5)(c). This is inappropriate in light of the earlier unchallenged findings. It is difficult to escape the inference that the drafter of the grounds was of the view that the circumstances in which the Appellant retained her right of residence at the point of divorce from her ex-husband had also to be continuing at the point at which she completed her five years residence in accordance with the Regulations in order for her to be a person who had retained a right of residence. I do not read the Regulations in such a

manner, and indeed to do so would substantially undermine the element of protection accorded to the spouses of EEA citizens in the event of divorce – such protection inevitably having its route in the right of free movement of EEA nationals themselves.

15. I reject the Respondent's challenge to the decision of the First-tier Tribunal. The decision of Judge Pedro contained no errors of law and therefore stands.

Notice of Decision

16. The decision of the First-tier Tribunal Judge contained no errors of law and stands.
17. Ms Mavi's appeal remains allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 22 November 2014