



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

Appeal Number: IA/07675/2014

THE IMMIGRATION ACTS

**Heard at The Royal Courts of
Justice, Belfast
On 20 October 2015**

**Decision and Reasons
Promulgated
On 29 October 2015**

Before

The President, The Hon. Mr Justice McCloskey

Between

CHRISTINE DALE HOLMES

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

Appellant: Ms F Connolly, of Counsel, instructed by Sheridan Leonard Solicitors

Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 27th January 2014, the Appellant's application for a permanent residence card under the Immigration (EEA) Regulations 2006 was refused. The decision maker stated:

“No evidence of how your EEA sponsor was exercising Treaty rights in the United Kingdom for a continuous period for five years has been supplied.”

The ensuing appeal to the First-tier Tribunal (the “FtT”) was dismissed.

2. The sponsor, or EEA national concerned, is the Appellant’s spouse. Having regard to all the evidence and the findings of the FtT, there are three indelible and incontestable facts in the overall matrix: the sponsor was born in Northern Ireland, has lived virtually all his life in Northern Ireland and has worked in no country except Northern Ireland. The second indelible feature of the matrix, which is a matter of law, is that the sponsor is both a British citizen and an Irish national. The FtT dismissed the appeal on the following basis:

“He is not however exercising Treaty rights within the 2006 Regulations. He has not exercised Treaty rights outside of the United Kingdom.”

3. In McCarthy - v - Secretary of State for the Home Department (Case C-434/09), the CJEU decided, at [59](1):

“**[The Citizenship Directive]** ... must be interpreted as meaning that [it] is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State.”

The Court further held that, similarly, Article 21 TFEU is of no application.

4. The consideration that the Secretary of State’s refusal decision was not based upon the McCarthy decision is of no moment. Equally irrelevant is the arguable error of law identified in the grant of permission to appeal, namely the FtT’s failure to make clear findings on the evidence pertaining to the sponsor’s employment. Insofar as this error occurred, it is plainly immaterial. The cornerstone of the law in this field is the principle of the efficacious enjoyment of primary Treaty rights. This, fundamentally, involves migration from one Member State to another. This is abundantly clear from the recitals of the Directive:

“(1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States

(2) The free movement of persons constitutes one of the fundamental freedoms of the internal market

...

(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members

...

(9) Union citizens should have the right of residence in the host Member State for a period not exceeding 3 months

...

(13) The residence card requirements should be restricted to family members of Union citizens who are not nationals of a Member State for periods of residence of longer than three months.”

In short, this case is defeated at first base. The door to the Citizenship Directive and the implementing EEA regulations is firmly locked by the facts and factors highlighted above and the Appellant’s case is resoundingly defeated by the decision in McCarthy.

DECISION

5. For the reasons elaborated above, I dismiss the appeal and affirm the decision of the FtT.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Dated: 20 October 2015