



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/50954/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> November 2014

Decision & Reasons Promulgated  
On 16<sup>th</sup> January 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS RHELIE BAQUIRAN UDANI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Richardson, Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of the Philippines born on 23<sup>rd</sup> February 1979. The Appellant's immigration history is that on 21<sup>st</sup> February 2000 she applied for a six month visit visa. That application was replaced by one for indefinite leave to remain on 9<sup>th</sup> October 2000 and that was refused. On 24<sup>th</sup> December 2004 she applied for leave to remain outside the Rules and that again was refused but not until 18<sup>th</sup> July 2007. On 18<sup>th</sup> July 2007 she was served with a IS151A notice. On 13<sup>th</sup> July 2013 application was made on her

behalf for a residence card as a confirmation of a right to reside in the United Kingdom as the spouse of a Polish national Mr Lukasz Piotrowski. It is clear from that immigration history that the Appellant's immigration history can at best be described as poor and that she has on many occasions been an overstayer. On 24<sup>th</sup> November 2013 the Appellant was served with a Notice of Refusal letter. It was noted therein that in support of the Appellant's application the Appellant had provided wage slips for the weeks 27<sup>th</sup> June 2013 and 11<sup>th</sup> July 2013 from RET Engineering Limited and Lloyds TSB statements to cover the period 10<sup>th</sup> January 2013 to 9<sup>th</sup> July 2013. It was further noted that in order to qualify for a residence card the Appellant had to provide evidence to demonstrate that her EEA Sponsor was exercising treaty rights through employment or self-employment. The Appellant claimed her EEA national Sponsor was employed with RET Engineering Limited and that whilst wage slips from 27<sup>th</sup> June 2013 and 11<sup>th</sup> July 2013 from RET Engineering Limited showed cheque payments of £347.82 and £358.33 the bank statements did not show corresponding entries to match the amount of the wage slips. Without any further evidence the Secretary of State was therefore not satisfied that the Appellant's EEA national is presently employed by RET Engineering Limited as claimed hence the refusal to issue the confirmation sought was made with reference to Regulation 6(b) of the Immigration (European Economic Area) Regulations 2006.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Mrs RJNB Morris sitting at Richmond on 22<sup>nd</sup> July 2014. In a determination promulgated on 4<sup>th</sup> August 2014 the Appellant's appeal was dismissed under the Immigration Rules and under the EEA 2006 Regulations.
3. On 8<sup>th</sup> August 2014 Grounds of Appeal were lodged to the Upper Tribunal. That application for permission was refused by First-tier Tribunal Judge Lever on 21<sup>st</sup> August 2014. That application was renewed when the extended grounds were submitted on 5<sup>th</sup> September 2014. On 14<sup>th</sup> October 2014 Upper Tribunal Judge Eshun granted permission to appeal. Judge Eshun considered that it was arguable that the judge erred in concluding that it had not been shown that the Sponsor was a "qualified person" for the requisite continuous five year period. Judge Eshun noted that the grounds made it clear that the applicant was seeking a residence card as the wife of the Sponsor, an EEA Polish national. That application was refused under Regulation 6 because the Respondent was not satisfied that the Sponsor is presently employed with RET Engineering Limited as claimed and that in such circumstances it was arguable that the judge erred in considering the issue in terms of a "continuous five year period."
4. It is on that basis that the appeal comes before me. The Appellant is represented by his instructed Counsel Mr Richardson. The Secretary of State appears by her Home Office Presenting Officer Mr Kandola.

## Submissions

5. Mr Richardson contends that the judge has been pre-occupied in showing that the Sponsor has worked for five years continuously as a worker. He contends that it was only necessary for the Sponsor to be a qualified person at the date of hearing and the judge should not have been concerned with the Sponsor's history but concerned with his employment at the date of the hearing. Mr Kandola acknowledges this position and indicates he accepts that there is a material error of law in the approach adopted by the First-tier Tribunal Judge. Whilst noting that the P60 provided in the Appellant's bundle corroborates to a degree the employment history of the Sponsor by checking with HMRC with regard to the Sponsor's employment that will be determinative. He asked me to find that there is an error of law but not to prepare my determination until such time as he has obtained the relevant information. Mr Richardson is agreeable with this approach.

## Findings

6. In such circumstances I agree and concede that there has been a material error of law in the determination of the Tribunal Judge. I also acknowledge the position as to what will be determinative of the outcome of this appeal which is agreed to by both the representative of the Appellant and the Secretary of State. I am now provided with an email from the Secretary of State dated 6<sup>th</sup> January 2015. That email reads as follows

"I have just received information from HMRC which confirms that the Appellant's husband Lukasz Piotrowski (the EEA Sponsor) has been employed since 2009 with RET Engineering Limited and is presently employed there and that the details of his last P60 are accurate.

As the only outstanding issue was whether the EEA spouse is working and thereby exercising treaty rights this information is determinative of the matter. Accordingly the SSHD is content for the appeal to be allowed."

7. In such circumstances the Appellant's appeal is allowed under the EEA Regulations.

## Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and is set aside. The decision is re-made allowing the Appellant's appeal under the Immigration (European Economic Area) Regulations 2006.

No anonymity direction is made.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **14<sup>th</sup> November 2014**

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date **14<sup>th</sup> November 2014**

Deputy Upper Tribunal Judge D N Harris