



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/08039/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 10 July 2017

Decision & Reasons Promulgated  
On 12 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOSEFINA PAET FAJARDO  
(NO ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr Whitwell a Senior Home Office Presenting Officer

For the Respondent: None

DECISION AND REASONS

Background

1. For the sake of consistency with the First-tier Tribunal, I will refer to Ms Fajardo as the Appellant and the Secretary of State as the Respondent. I note here that there appears to be no appeal in the linked matter EA/09308/2016 regarding [JP] which was allowed following consideration on 18 January 2017.

2. The Respondent refused the Appellant's application for a Permanent Residence Card on 15 June 2016. Her appeal against that was allowed by First-tier Tribunal Judge Mailer ("the Judge") following consideration of the papers on 24 December 2016.
3. First-tier Tribunal Judge Pedro granted permission to appeal (24 May 2017). He said it is arguable that the Judge failed to give adequate reasons for concluding at [26] that the Appellant had established 5 years' continuous exercise of EEA Treaty Rights.

### The Judgement

4. The Judge notes under the heading "Assessment"

"[23] The appellant has produced documentation showing her employment for periods between 1999 and 2016. The originals have not been produced.

[24] However, I have no reason to suppose that the documents produced are anything other than genuine and authentic. The respondent refused her application on the basis that photocopies are not accepted. The appellant has stated that she does not possess all the original documents and would have been willing to provide them if the respondent made a request.

[25] The appellant has also produced evidence as to her residence and addresses from time to time. She has produced HMRC PAYE coding notices for the year 2013-14 sent to her address in Bromley. The London Borough of Lewisham Treasurer informed her that her new tax code for the year 6 April 2013 until 5 April 2014 would replace her earlier code.

[26] Having regard to her evidence as a whole I am satisfied that the appellant has shown on the balance of probabilities that she has been exercising Treaty rights in the UK for five continuous years as a worker."

### Discussion

5. The Respondent was concerned that in 1999/00 and 2000/01 the Appellant earned £691 and £537.56 annually which indicates negligible employment. She gave birth on 24 October 2004 and was entitled to a reasonable amount of maternity leave but did not return to work until either 2008 or 2009. The P60 for 2009/10 records an annual income of £987. This pattern falls short of establishing a period of 5 years' continuous exercise of EEA Treaty Rights.
6. Given the fact that the Appellant was unrepresented I took her carefully through the determination and tried to ensure she understood the Respondent's concerns about the lack of evidence and regarding the Judgement. She simply said that her documents had been produced.

7. I note that the Appellant had sought an appeal on the papers at the first hearing. Her grounds of appeal did not deal with the Respondent's concerns and were generic in nature. She had filed no statement within her 241 page bundle that addressed those concerns. The judgement did not deal with the concerns in any material way. It was inadequate to say that the documents were genuine as that does not address the issue of the "gaps" in having a meaningful income or any income. I am therefore satisfied that the Judge did materially err in relation to whether the Appellant had been exercising EEA Treaty Rights for the 5 year period required as the findings did not address the unchallenged concerns raised by the Respondent.
8. Having heard submissions, I agreed that it was appropriate to remit the matter for a de novo consideration by a Judge other than Judge Mailer. As the Appellant only paid for a paper hearing, I explained to her the need to file evidence seeking to answer the Respondent's concerns, and if she wished to have an oral hearing, she may need to pay the balance of the oral hearing fee.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for it to be considered de novo by a Judge other than Judge Mailer.

Deputy Upper Tribunal Judge Saffer  
10 July 2017