



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

Appeal Numbers: EA/14413/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 November 2017**

**Decision & Reasons Promulgated  
On 20 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**MIKDAM JASIM  
(ANONYMITY ORDER NOT MADE)**

Appellant  
**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondents: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Myers (hereinafter "the judge") promulgated on 23 February 2017, brought with the permission of First-tier Tribunal Judge Alis granted on 12 September 2017.
2. The appellant is a citizen of Denmark born on 27 July 1969. He entered the United Kingdom on 7 October 2010. On 3 September 2015 he applied for

permanent residence on the basis of having completed five years' residence in the United Kingdom under the Immigration (EEA) Regulations 2006 (as they then were). The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 7 December 2016, and a Notice of Immigration Decision was issued on the same date.

3. The appellant appealed to the IAC. The appeal was dismissed by the judge for reasons set out in her decision.
4. The appellant now seeks to challenge the conclusions of the judge.

### **Consideration**

5. The key issue before the judge was whether the appellant has established that he has been exercising treaty rights for a continuous period of five-years. The judge determined the appeal on the papers upon the appellant's request. The judge referred to the guidance notes (unspecified) for persons applying for permanent residence which identified the documents that "must" be submitted with the application. The judge observed the documents should take the form of an employment letter, wage slips, bank statements and P60's. The judge noted the appellant provided a P45 and P60 for Aya UK Ltd, payslips for M & J Autos, a schedule of his employment from HMRC showing his employment from 2010 to 2016 and a letter from M & J Autos stating that he has been in employment with them since 1 July 2013 to present. While the judge found this evidence was sufficient to cover the period from 2013 to 2016, she was not satisfied that the HMRC printout was sufficient to cover the period from 1 May 2012 to 30 June 2013, essentially because the appellant had not submitted all the required evidence in accordance with guidance. Accordingly, she dismissed the appeal.
6. The appellant obtained permission to appeal from the First-tier Tribunal on the basis that it was arguable that the judge erred in failing to properly consider the evidence from HMRC confirming his employment.
7. The matter thus comes before me to determine whether the judge erred in law. At the hearing the appellant did not appear and was not represented. A Notice of Hearing informing the appellant of the date, time and venue of the hearing was effectively served and so I proceeded to hear the appeal in his absence. After some discussion between the Tribunal and Mr Jarvis, he acknowledged that the judge was not bound by the guidance and I announced by decision that I considered that the judge erred in law by setting too high a test in requiring bank statements and wage slips to be submitted as stipulated in the guidance, which was not binding on her. That error in her approach led to a failure to properly consider the letter from HMRC of 15 December 2016 identifying the appellant's sources of income between year ending April 2011 and April 2016. While I do not say that the decision reached by the judge is ultimately wrong, it is the manner and route by which that conclusion has been reached which is flawed.

8. Mr Jarvis invited me to remake the decision on the evidence filed with the Tribunal and there was no reason not to do so.
9. In remaking the decision, I remind myself that the burden of proof is on the appellant to establish that he is, on the balance of probabilities, entitled to a permanent residence card as at the date of hearing.
10. The appellant says that he qualifies for permanent residence as a worker. In his application form the period that he relies upon is from 15 March 2011 to the present date. There is no evidence before me demonstrating how the Appellant satisfies regulation 6 of the EEA Regulations post April 2016. The evidence is limited to the period April 2011 to April 2016 and is the period that I have assessed. The appellant relies on the letter from HMRC which identifies his sources of income between the year ending April 2011 to April 2016. While that evidence is sufficient to show that the appellant was a jobseeker/worker for the year ending April 2011 and 2013 to 2016, I agree with Mr Jarvis that there are difficulties with the evidence for the year ending April 2012. The HMRC letter does not show any sources of income for the 2011 to 2012 tax year and this evidence does not sit comfortably with a P60 for the same period which purports to show earnings from employment.
11. In the circumstances, I am not satisfied that I can place any reliance on the P60 as evidence of the Appellant's economic activity for that period and there thus remains a lacuna in the evidence and thereby a gap in the five-year period that remains unaccounted for. Accordingly, the appellant has not demonstrated that he has been exercising treaty rights for a continuous period of five years and the appeal is therefore bound to fail.

**Notice of Decision**

12. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.
13. I remake the decision dismissing the appellant's appeal.

No anonymity order is sought or made.

Signed:

Date: 10 December 2017

**Deputy Upper Tribunal Judge Bagral**