Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01849/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 April 2018	**On 2 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

PATRICIA CSIKOSOVA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

For the Appellant: Herself
For the Respondent: Ms J Isherwood (Home Office Senior Presenting Officer)

1. This is the appeal of Patricia Csikosova, a citizen of Slovakia born 5 September 1981, against the decision of the First-tier Tribunal of 25 July 2017, itself brought against the refusal of her application for permanent residence as an EEA national, dated 3 February 2017. Although the Appellant began these proceedings in her maiden name, following her subsequent marriage she has taken her husband's name and so should be known as Patricia Giles.

2. The Appellant's application of 31 December 2016 was refused because the Secretary of State considered inadequate evidence had been provided of five years' continuous residence whilst exercising Treaty Rights. Whilst the Appellant had provided a letter from Starbucks Coffee Company UK Ltd of 2 February 2010 confirming her employment there since 22 December 2009, and a January 2017 letter from KBA UK Ltd confirming her employment from 29 April 2013, both those letters, and other material including P60s, were photocopies and thus not accepted as reliable.

3. Grounds of appeal stated that original payslips, P60 and a letter from her employer were now being supplied. The Appellant wrote in the application form that she had been working and contributing to the UK for over five years, and indeed had done so since 31 August 2003.

4. The First-tier Tribunal noted the burden of proof lay upon the Appellant to establish continuous residence of five years exercising Treaty Rights. By now she had provided a "virtually (2 were missing) unbroken run of original wage slips with a satisfactory employer's letter from KBA and P60s covering the period" from 29 April 2013 to 31 December 2016.

5. In order for her to demonstrate five years' continuous exercise of Treaty Rights, she would need to establish a further period of work from 31 December 2011 until 28 April 2013. The First-tier Tribunal did not consider she had done so:

   (a) An employer's letter of 10 February 2017 from Starbucks attesting to her employment at the relevant dates was not original as the signature was photocopied, and the original letters from that employer were related to a trial deployment and performance review in 2010;

   (b) Her wage slips covered only October 2012 to spring 2013, and

   (c) A P60 for April 2012 to April 2013 nevertheless left a question mark over the period from 31 December 2011 until April 2012.

6. Accordingly, whilst on balance of probabilities she had satisfied the First-tier Tribunal that she had worked from April 2012 until 31 December 2016, that still left a shortfall of several months, since 31 December 2011, preventing her from proving a working history of five years.

7. Grounds of appeal of 4 August 2017 stated that the only available evidence from Starbucks had been a printout from an email: like many companies, they operated on a paperless basis. She had requested further evidence. She suggested that HMRC could provide confirmation were the information sought from them.

8. The First-tier Tribunal granted permission to appeal on 23 January 2018 because it perceived a Robinson-obvious point: her original grounds of appeal to the First-tier Tribunal that launched the instant proceedings had made the assertion of lengthy residence since 2003 and that the Appellant was accordingly entitled to have that ground adjudicated upon.

Findings and reasons

9. Before me the Appellant sought to rely on fresh evidence, not available at the time of the hearing before the First-tier Tribunal, by way of HMRC records proving her length of residence in the UK. She quite properly acknowledged that the only concrete evidence she possessed which made good the gap in her evidence of exercising Treaty Rights, as perceived by the First-tier Tribunal, post-dated its decision.

10. In those circumstances, as I explained to the Appellant at the hearing, Ms Isherwood was perfectly entitled to defend the appeal on the basis that no relevant evidence had been overlooked by the First-tier Tribunal. The ground on which permission to appeal was granted was something of a red herring. The Appellant made an assertion in her grounds of appeal that was, unfortunately, unsupported by documentary evidence. Such an assertion could not undermine the conclusion of the First-tier Tribunal which had already put in issue the period of her claimed residence because of a lack of corroborative evidence.

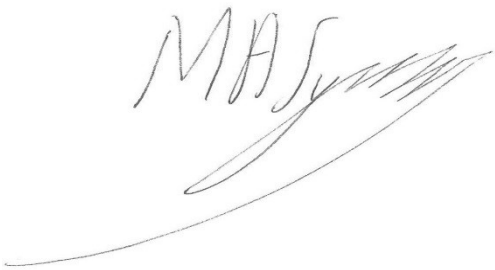
11. I have no reason to doubt the Appellant's indication that she now possesses evidence of her history of contributions to HMRC throughout her UK residence. However, that evidence is not admissible before the Upper Tribunal unless an error of law is shown in the decision of the First-tier Tribunal.

12. The Appellant may very well have a perfectly viable further application to make to the Secretary of State, and she is of course free to do so at any time. She would have the advantage of being able to point out the acceptance of a significant period of work by the First-tier Tribunal. But there is no error of law in the decision of the First-tier Tribunal, and I accordingly dismiss her appeal.

Decision:

The appeal is dismissed.

Signed: Date: 5 April 2018



Deputy Upper Tribunal Judge Symes