



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03147/2016

THE IMMIGRATION ACTS

Heard at: Manchester  
On: 21<sup>st</sup> March 2018

Decision and Reasons Promulgated  
On: 23<sup>rd</sup> March 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Abdul Qayyum  
(no anonymity direction made)

Appellants

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Hashmi, Mamoon Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 30<sup>th</sup> January 1981. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge AR Hudson) to dismiss his appeal against a decision to refuse to grant him

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<sup>1</sup> Permission granted on the 17<sup>th</sup> January 2018 by First-tier Tribunal Judge Andrew

permanent residence under the Immigration (European Economic Area) Regulation 2006.

2. The Appellant's application was based on his assertion that he had accrued five years' continuous residence in accordance with the Regulations, as the family member (spouse) of Dutch national [AH]. As such was entitled under Regulation 15 to a grant of permanent residence.
3. The Respondent refused the application on the 9<sup>th</sup> March 2016. The Respondent was not satisfied that the Appellant was entitled to a grant of permanent residence because she was not satisfied that [AH] had been exercising treaty rights throughout the relevant period. She was particularly concerned about the lack of evidence relating to the period November 2011- April 2012. That then was the matter in issue before the First-tier Tribunal.
4. Judge Hudson heard oral evidence from the Appellant and his wife [AH]. He records the evidence of [AH] that she was employed until September 2011 when she left to go on maternity leave. She stated that she had started an online trading business called 'GB Pearls' but it had not at first gone well. She had found it difficult to make sales on 'eBay' because she did not have ratings yet so she had sold a couple of products on 'gumtree', a mobile telephone and a 'TV kit'. She had registered her business for tax in April 2012 and this was confirmed by her accountant and documentation from HMRC. Judge Hudson's assessment of that evidence is found at paragraph 15 of the decision:

"[AH] gave evidence before me in an honest manner but she was wholly unable to give any specific evidence of what she was doing in furtherance of her business at any particular date. She has no documentation from the period up to April 2012 but is not able to fill in the gaps in the evidence through recollection. Although I found her honest, she is wholly unreliable in her history. I have seen evidence that on 1<sup>st</sup> November 2011 [AH] advertised a TV kit for sale on eBay and sold it at auction. In February 2012 she bought three mobile phones for £368 from Marl Tech. Neither of these transactions is suggestive of business trade. Although I accept that a person need not be making a profit in order to be self-employed, in the absence of any evidence to the contrary, I conclude that [AH] began her business in April 2012 as stated by her accountant and on her tax return".
5. Accordingly Judge Hudson found there to be a gap in the record in respect of [AH]'s exercise of treaty rights, and dismissed the appeal.
6. The Appellant now appeals on the grounds that the First-tier Tribunal made apparently contradictory findings. It is submitted that the finding that there was no self-employed economic activity taking place during the relevant period cannot be squared with the Tribunal's acceptance of [AH]'s evidence that she made two sales on 'gumtree'. The Tribunal

accepted that [AH] need not have been making a profit to be engaged in self-employment.

7. In granting permission First-tier Tribunal Judge Andrew found that ground to be arguable and added a further point: the decision of the First-tier Tribunal was in July 2017, some five years and two months after April 2012, when it was accepted that the business had been launched. At the date of the appeal hearing the Appellant had therefore been residing in the UK in accordance with the Regulations for a continuous period of five years and the appeal should arguably have been allowed on that basis, regardless of the findings on the period November 2011 to April 2012.
8. Before me the parties agreed that Judge Andrew had been quite correct in her identification of the further ground. There was no obligation on Mr Qayyum to demonstrate that he had been residing in the UK in accordance with the Regulations in any *particular* five-year period. At the date of the First-tier Tribunal's decision, any five years would do. On its own findings such a period arose between April 2012 and the date of the appeal in July 2017, and the appeal should have been allowed on that footing. It follows that I need not deal with the grounds as originally drafted.

### **Decisions**

9. The making of the First-tier Tribunal decision involved an error in approach such that the decision is set aside.
10. The decision is remade as follows: the appeal is allowed with reference to Regulation 15 of the Immigration (European Economic Area) Regulations 2006.
11. I was not asked to make an order for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce  
Dated 21<sup>st</sup> March 2018