



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/13577/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 9 July 2018

Decision & Reasons Promulgated
On 13 July 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR CHRISTOPHE LOUIS JACQUES CORNAIRE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Jacob, Counsel, instructed by Withers LLP

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Christophe Louis Jacques Cornaire, is a citizen of France. His date of birth is 26 January 1968.
2. On 21 June 2016 the Appellant applied for a document certifying permanent residence in the UK. The Respondent considered his application and accepted that he met the requirements of Regulation 15(1)(a) of the 2006 Regulations based upon “the compelling evidence” that he had provided. It was decided that he would qualify for

permanent residence from 15 April 2004. However, the application was refused because the Secretary of State was not satisfied that there was evidence demonstrating that since 5 April 2004 the Appellant had not been absent from the UK for a period exceeding two consecutive years. He was not satisfied that the right of permanent residence accrued to the Appellant had not been lost through absence from the UK pursuant to Regulation 15(2) of the 2006 Regulations.

3. The Appellant appealed against the decision and his appeal was dismissed by Judge of the First-tier Tribunal Daldry in a decision promulgated on 22 March 2018, following a hearing at Taylor House on 7 March 2018. On this occasion the Appellant was represented by Counsel. There was no representative on behalf of the Respondent. Permission to appeal was granted to the Appellant by Judge of the First-tier Tribunal P J M Hollingworth on 10 May 2018. Thus, the matter came before me to determine whether the judge erred.

The decision of the FtT

4. The judge correctly identified the issue as whether the Appellant had lost his right of permanent residence through absence for a period exceeding two consecutive years.
5. It was accepted that the Appellant resided in the UK from 1 December 1997 to 2 February 2006 during which time he was exercising treaty rights as a worker. He moved to Hong Kong on 2 February 2006 where he remained until 2011. He then relocated to France in 2011 and then moved to New York that year where he remained until 2013. He then relocated to France and returned to the UK in August 2014 and has resided here since. The Appellant gave evidence about returning to the UK periodically and this evidence was supported by documentary evidence of photographs, air tickets, family and economic ties here. The judge considered the evidence and found that the Appellant had not been physically absent from the UK for a period exceeding two consecutive years.
6. The judge at paragraph 23 stated as follows:-

“The photographic evidence was uncontroversial and the witness evidence was credible in my finding. However, it is my finding that from the time the Appellant moved to Hong Kong in February 2006, he was ‘absent’ from the United Kingdom until he returned to the United Kingdom in August 2014. The Appellant gave cogent credible oral evidence to say that when he was working in Hong Kong he was resident there. He was taxed there. To all intents and purposes, he was ‘living’ in Hong Kong until he left in 2011. Thereafter he was travelling in France and then moved to New York where he remained until the return visits to the United Kingdom after a further period in France, in August 2014. The return visits to the UK during the period February 2006 to August 2014 were short visits using holiday entitlement from the Appellant’s employer. These visits are inadequate in my finding either in their nature or in length of time to suggest that the Appellant was other than ‘absent’ from the UK by virtue

of the fact that he was living in Hong Kong, France (briefly) and New York until the summer of 2014. It is my finding that the Appellant's continuous residence has then restarted from August 2014. If he continues as he is now, he will have completed five years by August 2019. Assuming that there are no changes to the Rules or the Regulations he may well be in a position at that point to apply for permanent residence".

7. The judge concluded that the Appellant had been absent from the United Kingdom for the period 2006 until August 2016 when he returned. Thus, his application was dismissed under the 2006 Regulations.

The Grounds of Appeal

8. The grounds of appeal argue that the judge has misdirected herself and failed to give adequate reasons for her conclusion. Reference is made to Regulation 15(2) of the 2006 Regulations which transposes Article 16(4) of Directive 2004/38/EC (Citizens Free Movement) which reads:-

“Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years”.

9. Ms Ahmad conceded on behalf of the respondent that the judge materially erred for the reasons raised in the grounds. She conceded that on the evidence before the judge and applying the findings made, the appeal should be allowed.

Error of law

10. It is not necessary to examine the nature of the Appellant's absence after he acquired the right of permanent residence unless it can be said he was away for more than 24 months. Accordingly, the Appellant did not lose his right of permanent residence. The judge materially erred.

The Decision

11. I set aside the decision to dismiss his appeal. I re-make the decision and allow the appeal under the 2006 Regulations.

Signed *Joanna McWilliam*

Date 11 July 2018

Upper Tribunal Judge McWilliam