



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

Appeal Number: EA/04564/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 February 2019**

**Decision & Reasons  
Promulgated  
On 28 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge O'Hanlon, promulgated on 28 November 2018. Permission to appeal was granted by First-tier Tribunal Judge Pedro on 28 December 2018.

Anonymity

2. An anonymity direction was made previously at the appellant's request, and this is reiterated below for the same reasons.

### Background

3. On 10 April 2018, the appellant sought a permanent residence card to confirm that he was the family member of his Irish spouse. That application was refused by the respondent on 21 June 2018 because it was determined that the appellant had not provided any employment documents on behalf of his EEA sponsor and the respondent had been unable to confirm whether she had exercised Treaty rights in the United Kingdom as a worker for a period of five consecutive years.
4. In his grounds of appeal to the First-tier Tribunal, the appellant stated that his spouse had been living and working in the United Kingdom for over 10 years; he was not aware that he had to submit evidence that his wife was working in the United Kingdom and that he had enclosed the relevant document with the notice of appeal.

### The hearing before the First-tier Tribunal

5. The appeal was considered on the papers, at the appellant's request. The judge concluded that the evidence before showed only that the sponsor was employed between 15 September 2012 and 31 July 2014, that she took a career break between May 2016 and May 2017 and that there was no evidence whether she returned to work or was working at the date of the hearing.

### The grounds of appeal

6. The grounds of appeal argued that the sponsor was in continuous employment from 2012 to 2017 and this was shown in the payslips provided. It was also said that the sponsor took maternity leave in February 2015 and started a career break in May 2016 but remained an employee throughout. The appellant argued that the qualifying period of his application was from July 2012 to June 2017 and his wife continued to be employed until October 2017. At this point, the appellant supported the family from his salary.
7. Permission to appeal was granted on the basis sought.

### The hearing

8. The sponsor attended the hearing however, he had little he needed to say because Mr Bramble indicated that he was "home and dry" on the evidence of his wife's employment, provided that this was the evidence which was before the judge.
9. At the end of the hearing, I advised the parties that the decision of the First-tier Tribunal was set aside owing to the failure to consider the evidence before it. I then remade the decision, allowing the appeal.

### Decision on error of law

10. The appellant provided evidence showing his wife's employment from July 2012 until October 2017 in advance of the hearing of his appeal. He lodged his appeal on 25 June 2018 and on 3 July 2018 he sent a large bundle of documentary evidence by email, using the online coversheet to ensure that his documents were linked to his casefile. All of that evidence was before the First-tier Tribunal judge. Indeed, some of that evidence was referred to. As rightly conceded by Mr Bramble, there was a complete record of the employment history of the appellant's wife over a continuous five-year period. The judge states at [14] that there were only payslips from 15 September 2012 until 31 July 2014. This finding is manifestly incorrect and takes no account of the form P60's which were provided covering the years April 2012 until April 2016 as well as the evidence of maternity and parental leave. Therefore, the judge erred in failing to take into consideration material evidence and his findings were unsafe. His decision is set aside.
11. I remake the decision, allowing the appeal based on my consideration of the same evidence which was before the First-tier Tribunal, which Mr Bramble accepted amounted to evidence that the appellant's wife was a qualified person for a continuous period of five years. The appellant is therefore entitled to a permanent residence card.

### Conclusions

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

I set aside the decision to be re-made.

I substitute a decision allowing the appeal.

### **Notice of decision**

### **The appeal is allowed**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 08 April 2019

Upper Tribunal Judge Kamara

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award for the following reason. The appellant accepts on page 13 of his notice of appeal that he mistakenly sent only his own evidence of employment to the Secretary of State with his application for permanent residence, whereas he ought to have enclosed evidence relating to his wife.

Signed

Date: 08 April 2019

Upper Tribunal Judge Kamara