Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/13765/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14 March 2013	**On 13 June 2013**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

ARULMANI CHENGAMAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jaufurally
For the Respondent: Miss Kiss

DETERMINATION AND REASONS

1. The Appellant is a citizen of Mauritius born in 1986. She appealed against a decision of the Respondent on 28 May 2012 to refuse to issue her with a permanent residence card in accordance with regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 (the "EEA Regulations").

2. She claimed that she had been residing in the UK as the family member of Dasruth Lutchooman (her stepfather, an Italian national, the "EEA

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national") for a continuous period of five years. She was previously issued with a residence card as the family member of the EEA national on 14 September 2006 valid to 11 September 2011. She had also previously applied for a permanent residence card on the same basis on 24 August 2011 which was refused on 24 October 2011.

3. In the refusal letter dated 24 October 2011 the Respondent noted that the EEA national had been claiming Jobseeker's Allowance since March 2006. A person who has been unemployed and claiming Jobseeker's Allowance for more than six months can no longer be classed as exercising Treaty rights as a jobseeker. However, she failed to show that the EEA national was exercising Treaty rights after the six months in another capacity. Also, as a jobseeker it had not been shown that he was genuinely seeking work during his period of unemployment.

4. In the refusal letter of 28 May 2012 (the decision under appeal) the Respondent noted that invoices had been provided to show the EEA national had been self-employed since 2009. However such did not satisfy the requirement for the qualifying period of 2006 to 2008. Whilst it was accepted that an EEA national claiming Jobseekers Allowance is exercising Treaty rights such can only be for a period of no longer than six months. As the EEA national had exceeded that period it cannot be counted towards the qualifying period for permanent residence.

5. The Appellant appealed on the basis that the EEA national did satisfy the requirements of regulation 6 as a qualified person and she had resided with him in accordance with these regulations for a continuous period of five years such that she satisfied the requirements of regulation 15(1)(b). Alternatively she is entitled to a residence card as the family member of an EEA national currently exercising Treaty rights in the UK and that the decision would breach Article 8 of ECHR.

6. Following a hearing at Hatton Cross on 26 July 2012, Judge of the First-tier Tribunal Jackson dismissed the appeal under the EEA Regulations and on human rights grounds.

7. Her findings are at [30] to [44]. She found that the relevant five year period was from the date the applicant becomes a family member (October 2005) to October 2010. The first and last part of that period was not in dispute. The EEA national was working from October 2005 to March 2006 and from 2009 onwards. The period in dispute was from March 2006 to 2009.

8. The judge at [31] accepted that if the EEA national established that he retained his status as a worker between March 2006 and September 2006 then his claimed vocational training at Croydon College could be considered in accordance with regulation 6(2)(c) such that he would retain his status as a worker for the period up to 2009.

9. However, the judge considered (at [37]) that it had not been established that the EEA national was a jobseeker within the meaning of regulation 6(1)(a) and 6(4), nor that he retained his status as a worker in regulation 6(1)(b) with reference to regulation 4(1)(a) by also being a jobseeker for the period March to September 2006. She took that view because there was insufficient evidence to establish that he was genuinely seeking employment in the period March to September 2006. She did not find that the "mere fact of receipt of Jobseeker's Allowance" establishes that a person is genuinely seeking employment in the absence of any other evidence of doing so in a particular period" [35].

10. Having found that the EEA national ceased to be a worker when sacked from his employment in March 2006 and did not retain his status as a worker in the intervening period to September 2006 as he was not working, nor was he a genuine jobseeker during that period, she did not find that

> "a person who commences vocational training can somehow resurrect his status as a worker from his last employment approximately six months previously and apply that throughout the intervening period when he would not otherwise have met the requirements as a worker or jobseeker-as-worker" [38].

11. Further, due to inconsistencies in the documentary and oral evidence the judge was not satisfied that the EEA national had undergone vocational training at Croydon College.

12. The judge went on to conclude in dealing with Article 8 that while the Appellant may have established a limited private life any interference would not be disproportionate to the legitimate public aim.

13. The Appellant sought permission to appeal. This was refused on 6 September 2012. Following reapplication to the Upper Tribunal permission was granted by Upper Tribunal Judge McGeachy who stated:

> "1. "The grounds of appeal claim that the Judge of the First-tier erred in concluding that the Appellant's stepfather was not an EEA national exercising Treaty rights and that therefore the Appellant did not qualify for residence.
>
> 2. I note that the Appellant, now aged 26 had previously had a residence card, valid until 2011, as the family member of her stepfather who is Italian.
>
> 3. I am concerned that the Respondent has read into the Immigration (EEA) Regulations (Regulation 6) that the Appellant's stepfather could only be considered to be a jobseeker for 6 months whereas that is not a condition which is set out in the Regulations.

4. While that may be a narrow point I am also concerned about the approach to the other activities of the Appellant's stepfather – the courses which he has undertaken and the fact that he may now be working – and in these circumstances I grant permission to appeal."

14. At the error of law hearing Mr Jaufurally sought essentially to rely on the detailed written grounds. In summary, the judge had been wrong to find that the EEA national had ceased to be a worker-as-jobseeker during the period March to September 2006 because it had not been shown he was looking for work. The Respondent in the refusal letters had accepted that Treaty rights were being exercised during that period. Also regulation 6(2)(b)(ii) states that worker status is not lost if a person has been unemployed for no more than six months which was the EEA national's position. Even if that status had not been protected over that six month period it was reasonable to give him that period to go from being involuntarily unemployed to finding and taking up vocational training (*per* regulation 6(2)(c)).

15. In reply, Miss Kiss did not appear to demur from the submission that the judge erred in concluding that the EEA national had ceased to be a worker, and thus a qualified person, during the period March to September 2006. That was the only matter at issue. She also indicated that it was accepted that the EEA national had undertaken vocational training at Croydon College as claimed.

16. I was invited, if it was concluded that there had been a material error of law to set aside the decision and remake it by allowing it.

17. I reserved my decision.

18. In considering this matter regulation 15 provides for a person to acquire the right to reside in the UK permanently subject to the requirements set out therein. Regulation 15 (1) states: *"The following persons shall acquire the right to reside in the United Kingdom permanently… (b) a family member of an EEA national who is not herself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;"*

19. A qualified person, such as the EEA national, would need to reside in accordance with the EEA Regulations for the five year period as set out in regulation 6 which states:

> *"6(1) In these Regulations 'qualified person' means a person who is an EEA national and in the United Kingdom as –*
>
> *(a) a jobseeker*
>
> *(b) a worker*
>
> *…*

(2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if –

...

(b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and –

(i) he was employed for one year or more before becoming unemployed;

(ii) he has been unemployed for no more than six months; or

(iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;

(c) he is involuntarily unemployed and has embarked on vocational training;

...

6(4) For the purpose of paragraph (1)(a) 'jobseeker' means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged."

20. In this case the judge erred in finding that having registered as a jobseeker the EEA national being in receipt of Jobseeker's Allowance had to show that he was genuinely seeking work during the period March to September 2006 and in failing to do so had not shown he was exercising Treaty rights. It was enough for the EEA national to have been unemployed for no more than six months (regulation 6 (2)(b)(ii)).

21. The Respondent, indeed, in the refusal letters accepted that the EEA national had been exercising Treaty rights during that period.

22. Regulation 6(1)(a) includes a provision that a jobseeker is a qualified person. But it is subject to regulation 6(4) which requires such a person to provide evidence that he is seeking work and has a genuine chance of being engaged. Regulation 6(2)(b) requires a person who has previously worked in the UK but is involuntarily unemployed to be registered as a jobseeker. This provision, however, is not subject to regulation 6(4) and here jobseeker has the meaning given to it in social security law.

23. In my judgment, it having been established that for the six months of unemployment (March to September 2006) the EEA national was

exercising Treaty rights and that in September 2006, it being undisputed he took up vocational training at Croydon College, the EEA national continued to exercise Treaty rights under regulation 6(2)(c). It is not challenged that he was in vocational training until July 2009 and thereafter was continuing to exercise Treaty rights as a self-employed person and as a worker until and beyond 2010.

24. I may say that I also find merit in counsel's further submission that having become involuntarily unemployed in March 2006 it cannot be argued that the EEA national is expected to embark on vocational training (regulation 6 (2)(c)) immediately or otherwise be considered to no longer be exercising Treaty rights. A reasonable period must be allowed for a suitable training course to be found. In my judgement the six months taken by the EEA national is a reasonable period being in line with the period of permitted unemployment stated in regulation 6 (2)(b)(ii).

25. I conclude from the evidence that the EEA national was exercising Treaty rights over the required continuous period of five years from October 2005 to October 2010.

26. The Appellant thus succeeds under regulation 15(1)(b) of the EEA Regulations having established that she has been residing as the family member of an EEA national for a continuous period of five years in circumstances where the EEA national has throughout that period been a qualified person. The appeal succeeds.

Decision

The decision of the First-tier Tribunal contained a material error of law. It is set aside and remade as follows: The appeal is allowed.

Signed Date: 13th June 2013

Upper Tribunal Judge Conway