



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

Appeal Number: EA/03435/2017

THE IMMIGRATION ACTS

Heard at Field House

On 4 January 2019

Decisions & Reasons

Promulgated

On 15 January 2019

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**MARIA [M]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following my decision of 30 October 2018 to set aside the determination of First-tier Tribunal James dated 27 April 2018.
2. The appellant is a Portuguese national born on 26 May 1960. She entered the UK in March 1993 and has lived here ever since. On 11

January 2017 she applied for a permanent residence card but that was refused on 12 March 2017 on the basis that she had failed to provide documentary evidence to show that she had exercised treaty rights for a continuous five-year period.

3. The appellant had challenged that decision on the basis that the judge's findings were contradictory and permission to appeal was granted by First-tier Tribunal Judge Davidge on 9 August 2018. I heard the challenge on 15 October 2018. Having found that the judge had failed to explain why she dismissed the appeal when she found the appellant to have been a truthful witness, I set aside the determination.

The hearing

4. The appellant attended in person accompanied by her partner, as she had done on previous occasions. As before, she was unrepresented and confirmed she wished to proceed without a representative. She relied on a chronology of her activities in the UK since her arrival in 1993. She explained that she had come to the UK to study at a private college. She had been supported by her father and had studied for four years, obtaining a degree in decorative arts in 1997. Following that she had been a job seeker and had attended several job interviews and visited the Job Centre. She had undertaken paid occasional work, commencing in 1998 and continuing through to 2000 when she then became a field work researcher at Luton University for a six month period in 2000/2001. After that, she became an employee for Kable Ltd until going on maternity leave to have her twins in late 2002. Her maternity leave came to an end in May 2003. She and her partner then decided that she should stay at home with their children.
5. At this point in the hearing, Mr Mills indicated that given the appellant's evidence, which he accepted, he was satisfied that the appellant had been exercising treaty rights for a five year period between May 1998 and May 2003. He had no further submissions to make and invited me to allow the appeal.
6. In the circumstances I had no need to trouble the appellant to make any submissions and I indicated that I would be allowing the appeal. I give my reasons below.

Discussion and Conclusions

7. I have considered the submissions and the evidence. I am grateful to Mr Mills for his pragmatic and wholly appropriate acceptance of the appellant's claim. I found the appellant to be a wholly credible witness both at this hearing and on the past occasion she came before me and I note that the First-tier Tribunal also expressed a similar view.

8. I accept that the appellant has been living in the UK since 1993 and has made this country her home. She has a British partner and they have twin daughters now aged 16. I accept that she came to the UK to study and indeed that she did so at a private college for 4 years from 1993 - 1997 following which she became a job seeker for 2-3 years. I accept that her illness interfered with her plans to work full time but note that she did undertake part time work from 1998 and then in 2000 commenced employment with Luton University and then Kable Ltd until May 2003. I am satisfied that the appellant completed two five year periods in the UK during which she exercised her treaty rights. The first was from 1993 - 1998 and the second, as accepted by Mr Mills, from May 1998 - May 2003. I also accept that the appellant had not thought it necessary to keep evidence of her past activities and that the current situation of the UK leaving the European Union was one which she could not have foreseen. In the particular circumstances of this very deserving case, I am satisfied that despite the absence of complete documentary evidence for the periods covered, the appellant's oral testimony, combined with the documentary evidence that is available, is sufficient evidence to make out her claim. I find that she is entitled to a permanent residence card.

9. **Decision**

10. The appeal is allowed under the EEA Regulations.

11. **Anonymity**

12. I was not asked to make an anonymity order and, in any event, see no reason to do so.

Signed



Upper Tribunal Judge

Date: 4 January 2019