



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

Appeal Numbers: IA/31477/2014
IA/31481/2014
IA/31482/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2015**

**Decision & Reasons Promulgated
On 26 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**AA
MA
HA**

~~(NO ANONYMITY ORDER MADE)~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: unrepresented

For the Respondent: Mr S. Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

- ~~1. An anonymity order was not requested and I see no need to make one.~~
2. The three appellants are Dutch nationals born on 22 May 2002, 12 November 2006 and 7 April 2009.

3. On 19 May 2014 they applied for certification of permanent residence as children of an EEA national exercising Treaty rights. The application was refused on the basis that they had not provided evidence of having resided in the UK for a continuous period of five years as required by Regulation 15(1) of the Immigration (EEA) Regulations 2006.
4. The appellants appealed and their appeal was considered by First-tier Tribunal (“FtT”) Judge Obhi on the papers. In a decision promulgated on 6 March 2015 the FtT dismissed the appeal on the basis that there was insufficient evidence to find the appellants had been living in the UK for the requisite period.
5. In the grounds of appeal the appellants stated that documents which had been sent to the FtT on 11 July 2014 by fax had not been considered by the judge. They provided evidence that these documents had been submitted.
6. At the error of law hearing the appellants (their mother acting on their behalf) handed to the Tribunal copies of the documents that had been submitted on 11 July 2014. These included:
 - a. In respect of the appellant born on 22 May 2002, a letter from the local authority dated June 2008 and school reports from 2009 - 2013
 - b. In respect of the appellant born on 12 November 2006, a medical appointment letter dated April 2009 and school reports from 2012 - 2014
 - c. In respect of the appellant born on 7 April 2009, a letter dated January 2010 from a health visitor, a medical appointment letter dated June 2012 and a 2014 school report.

Consideration

7. The appellants are entitled to confirmation of a right to permanent residence in the UK in accordance with Regulation 15(1) if they have resided continuously in the UK for five years. On 11 July 2014 they submitted evidence to the FtT to show their continued residence. Unfortunately, that evidence was not on the file when the appeal was considered on 24 February 2015.
8. Failure to take this evidence into account, although plainly not the fault of the FtT judge considering the appeal, amounts to an error of law. The aforementioned evidence, as described in paragraph 6 above, shows, on the balance of probabilities, that the three appellants have resided in the UK for five years such that Regulation 15(1) is satisfied. No argument was made by Mr Staunton to the contrary. Accordingly, I remake the decision to allow the appeals of all three appellants.

Decision

- a. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.
- b. I remake the decision and allow the appeals.
- c. ~~No anonymity order is made.~~

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 23 November 2015