Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: EA/11296/2016
& EA/11300/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 August 2017	**On 8 September 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JULIETTE N'DA DIETLIN
HERVE KAMGAM
(ANONYMITY DIRECTION MADE/NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior HOPO
For the Respondent: Ms E Fitzsimons of Counsel

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Buckwell promulgated on 7 December 2016 dismissing the appeals of Miss Juliette N'Da Dietlin and her husband Herve Kamgam against decisions of the Secretary of State to refuse to issue

them with documents confirming their right of permanent residence under the Immigration (European Economic Area) Regulations 2006.

2. The application had been made on the basis that the first respondent had acquired the permanent right of residence, having exercised her Treaty Rights for a period of 5 years between 2007 and 2012. It is not the respondents' case that she had been in employment for the whole period, but that she had not lost her status as a worker while at different times looking for employment, undergoing vocational training and maternity leave within the terms of Jessy St Prix v SSWP [2014] CJEU C-507/12. The second respondent has at all material times been married to the first respondent. It is accepted that his case stands or falls with that of the first respondent.

3. It is I consider important to bear in mind in this case the history of how this appeal arose. It does not appear to be in doubt that the first respondent has been living in the United Kingdom since 2007 or that she started working at that point. She and her husband have had two children. She has also had a work record which includes periods of unemployment and, it would appear, recommended training. She also relies on periods spent on maternity leave as counting towards her status as a worker.

4. There was an earlier decision in this case which came before First-tier Tribunal Judge Kempton sitting in North Shields. That decision was refused on the basis that the first respondent had not had comprehensive sickness insurance for a period whilst Judge Kempton considered that she had been a student. Rather than appeal against that decision by seeking permission to appeal to the Upper Tribunal the appellants made a fresh application which was in turn refused by the Secretary of State relying on the decision of Judge Kempton and stating also that the issue of comprehensive sickness insurance had not been resolved.

5. In brief the case at it is put to me today is that the first respondent has at all material times retained the status of being a worker. It is not in dispute that she initially worked in the United Kingdom. She had periods of unemployment but it is said materially for the purposes of this case that she had become involuntarily unemployed and had embarked on a vocational training course which covered a period in 2010 to 2012 whereby if she had retained the status of worker meant that she had a continuous five year period of residence in the United Kingdom as a worker. Whether the first respondent had retained status as a worker is important because workers (unlike students) do not require comprehensive insurance under the EEA Regulations as a condition of residence. It does not appear to me that Judge Kempton appreciated this point but it is equally important to note that in her decision that she considered that all the other requirements had been met and it was only the issue of comprehensive insurance which was not resolved in the respondents' favour.

6. Judge Buckwell does not appear from his decision to have focussed on that point. His findings are brief in that he had relied quite properly on Judge Kempton's findings and directed himself in accordance with **Devaseelan (Sri Lanka) [2002] UKIAT 702.**

7. At paragraph 18 the judge stated that "having considered all the evidence it does appear to me that the first appellant has strong grounds of appeal in maintaining that her previous application was inappropriately considered as was her subsequent appeal in relation to her failure to assess the terms thereof with respect to Regulation 6(2)(c) of the EEA Regulations. From the information before me I am satisfied that the first appellant met that criteria. On that basis the first appellant was a qualified person and has established a permanent residence entitlement consequently the second appellant also enjoys the same status."

8. The Secretary of State sought permission to appeal against that decision on the basis first that the judge had misdirected himself in law in that he had failed properly to apply the decision of **Devaseelan** to the findings of Judge Kempton specific reliance is made on the sixth principle set out in **Devaseelan**. It is also maintained in this context that the appellant's claim remains unchanged from that which was before Judge Kempton.

9. Having heard submissions I was satisfied that the issue here is a mixed issue of law and fact in that what is really in issue is whether the first respondent had retained status as a worker through attending vocational training. Neither judge appears to have made any proper finding on whether the training the first respondent clearly did was vocational training or not. There is thus no real finding on the issue binding on the second judge whose his reasoning is inadequate on this point.

10. As the issue of comprehensive insurance and the different status of whether of being a worker or a student whilst on vocational training does not appear properly to have been addressed by either Judge Kempton or Judge Buckwell, I consider that the decision needs to be set aside on that point in that the reasoning is not adequate and as Mr Melvin submitted out there is no proper finding of fact as to whether the course at which the first respondent attended at the relevant time was in fact a vocational course and to that end I set aside the decision on that point and asked for further submissions as to whether the training was vocational or not.

11. There is some merit in Mr Melvin's submission that the course studied is more general than might be expected but equally I note that the course there is no dispute that the first respondent attended it nor that the dates of attendance are in dispute was to take BTEC qualifications. Those are I consider as a matter of judicial knowledge primarily vocationally orientated.

12. More importantly it has to be borne in mind that this is a course that the first respondent was advised to attend by the relevant Jobcentre. It is also important to note that she was also as the documents show in a letter

from the Jobcentre Plus dated 27 September 2012 that she had continued to receive Jobseeker's Allowance income based whilst on that course. I considered that as Jobseeker's Allowance could not normally be available whilst someone is a student that this is a strong indication that Jobcentre Plus which is a part of the state was satisfied that this was vocational training, and on the balance of probabilities, I am satisfied that it was.

13. Accordingly I find that the course on which the first respondent was studying at the Thomas Danby Campus of Leeds City College was indeed a vocational course. I am therefore satisfied that having made that finding and the findings of Judge Kempton with regard to the other periods in which the applicant was either working or otherwise maintained the status of the worker that the applicant had met the requirements of paragraph 6 (2) (c) of the EEA Regulations that is that she was involuntarily unemployed and had embarked on vocational training and that accordingly whilst she was on that vocational training she retained the status of worker. It therefore follows that I find that the first respondent had been a worker and therefore a qualified person for a continuous period of five years and therefore she was entitled to a document confirming that status. It also follows that her husband is also entitled to such document and for these reasons I allow the appeal of the first and second respondents

Summary of Conclusions

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the decision by allowing the appeals under the Immigration (European Economic Area) Regulations.

Signed Date 7 September 2017

Upper Tribunal Judge Rintoul

TO THE SECRETARY OF STATE - FEE AWARD

I am satisfied on the facts of this case that there should be a fee award made in favour of the appellant. I am satisfied that the material put before the Secretary of State is the material that was put before me today and also before Judge Buckwell and that no point that has been made that has not previously been identified. In the circumstances it is appropriate and in the interests of just to make a fee award.

Signed Date 7 September 2017

Upper Tribunal Judge Rintoul