



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

Appeal Number: EA/12512/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 July 2017**

**Decision Promulgated
On 01 August 2017**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Marcin Jankowski
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: In person.

For the Respondent: Mr. L Tarlow, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a national of Poland born on 4 February 1979, has been granted permission to appeal to the Upper Tribunal against a decision of Judge of the First-tier Tribunal K. Henderson who dismissed his appeal against the respondent's decision of 23 September 2016 to refuse to issue him with a registration document confirming his permanent residence in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 (the "Regulations"). The judge's decision was promulgated on 13 December 2016.

2. The appellant's appeal was considered by the judge together with the appeal of his wife, Marta Milena Jankowska, also a national of Poland, born on 8 May 1981. The judge allowed her appeal, finding that she had submitted documentary evidence that established that she had exercised Treaty rights for a continuous period of 5 years. However, she dismissed the appeal of the appellant because she considered that there was insufficient evidence to show that he had been resident with his wife for a continuous period of five years and that the only information submitted which relates to him was the marriage certificate and one tenancy offer dated 25 February 2013.
3. It is plain from the judge's comments about the documents submitted in relation to the appellant that she had limited herself to considering only the documents that were in Mrs Jankowska's appeal file and which were submitted with her Notice of appeal dated 7 October 2016. There was a separate appeal file for the appellant which contained a separate bundle of documents submitted with his Notice of appeal, also dated 7 October 2016. They were sent to the First-tier Tribunal in an envelope which bears a postmark dated 8 October 2016. The appellant's bundle contained documents establishing that he had worked in the United Kingdom since at least 2007. There was also evidence that he was registered on 16 February 2007 under the Accession State Worker Registration Scheme.
4. At the hearing, Mr Tarlow accepted that the judge had overlooked considering the documents attached to the appellant's Notice of appeal. He accepted that the documents were material to the issue, i.e. whether the appellant had been exercising Treaty rights continuously for a period of 5 years. He accepted that the judge's decision should be set aside.
5. I am satisfied that the judge had materially erred in law by overlooking material evidence in relation to the appellant's appeal. I therefore set aside her decision to dismiss the appellant's appeal.
6. I proceeded to re-make the decision on the appellant's appeal at the hearing. Mr Tarlow had a sufficient opportunity to consider the documents attached to the appellant's Notice of appeal. Although there were no payslips, Mr Tarlow accepted that the appellant had submitted P60s for the tax years 2006-2007 until 2014-2015. There were also letters from Furniture Village. Mr Tarlow confirmed that he had no difficulty accepting that all of these documents were genuine. He therefore asked me to write a decision accordingly.
7. In effect, Mr Tarlow accepted that the documents attached to the appellant's bundle establish that the appellant has been a worker exercising Treaty rights in the United Kingdom continuously for a period of at least 5 years. I have examined the documents myself and I am satisfied that they are reliable. I am satisfied that the appellant has been exercising Treaty rights as a worker continuously for a period of at least 5 years. I am therefore satisfied that he meets the requirements of regulation 15.
8. I therefore allow his appeal against the respondent's decision.

Decision

The decision of Judge of the First-tier Tribunal Henderson involved the making of an error on a point of law such that it fell to be set aside. The decision in relation to appellant's appeal was set aside. The Upper Tribunal proceeded to re-make the decision. The Upper Tribunal allowed the appellant's appeal against the respondent's decision.

A handwritten signature in blue ink, appearing to be 'DKG', is located in the upper left quadrant of the page.

Upper Tribunal Judge Gill

Date: 1 August 2017