



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06034/2017

THE IMMIGRATION ACTS

Heard at Fox Court
On 13 December 2018

Decision & Reasons Promulgated
On 09 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

PAMELA DANIELLE DE FIGUEIREDO CIRIBELLI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Lee, Counsel

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Brazil born on 30 May 1989. She appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal N M K Lawrence, dismissing her appeal against a decision of the respondent, dated 22 June 2017, to refuse her a permanent residence card. The appellant exercised the right of appeal afforded by Regulation 36 of the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”)

2. Permission to appeal was granted on all grounds because it was arguable that Judge Lawrence had misunderstood the issues for decision. The appellant had argued that she had acquired a permanent right of residence while living with her father, Mr Rubson Ciribelli Pereira, who was married to an Italian national exercising Treaty rights in the UK. The judge had confused the requirements for extended family members to show recent and prior dependency.
3. At the beginning of the hearing Mr Wilding accepted that Judge Lawrence had made a material error of law and had failed to address the central question, which was whether the appellant had acquired a permanent right of residence as a result of living with her father and stepmother. There were no adverse credibility findings made against the appellant or her witnesses. The respondent had been unrepresented at the hearing.
4. In the circumstances, it is perfectly clear that Judge Lawrence's decision was erroneous in law and must be set aside for the reasons identified by Mr Lee in his grounds. I decided to remake the decision.
5. The appellant attended the hearing and was prepared to give evidence. However, it was not necessary to call her because Mr Wilding did not wish to challenge her evidence and he helpfully agreed that the appellant was entitled to a permanent residence card.

6. The EEA Regulations read as follows:

“Family member”

7. – (1) In these Regulations, “family member” means, in relation to a person (“A”) –

(a) ...

(b) A's direct descendants, or the direct descendants of A's spouse or civil partner who are either –

(i) aged under 21; or

(ii) dependants of A, or of A's spouse or civil partner; ...

Right of permanent residence

15. – (1) The following persons acquire the right to reside in the United Kingdom permanently –

(a) ...

(b) a family member of an EEA national who is not 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; ...”

7. This appeal turns on the issue of whether the appellant was dependent on her father for a continuous period of five years. I find as fact that she was. The appellant was born on 30 May 1989. She entered the UK on 14 August 2007, aged

18, and joined her father's household. Up to the point she turned 21, on 30 May 2010, she was the 'family member' of her stepmother by virtue of Regulation 7(1)(b)(i).

8. From that point until 14 August 2012 the appellant met the requirements of Regulation 7(1)(b)(ii) provided she was dependent on her father. The unchallenged evidence of the appellant is that she lived in her father's household, worked part-time as a childminder and paid a contribution to the household rent. She commenced full-time employment with Lacoste on 23 September 2013. Her father, stepmother and siblings were granted permanent residence cards on 10 October 2011. Evidently, the respondent was satisfied at that point that the appellant's father was the spouse of an EEA national exercising Treaty rights. It is more likely than not that he continued to be so.
9. I find the appellant was dependent on her father up to and beyond 14 August 2012. Although she had some income from childminding, this was not enough to meet her essential needs. She required financial support from her father and stepmother and she continued to be accommodated by them in return for a modest contribution towards the rent.
10. I find the appellant resided in the UK in accordance with the Regulations for a continuous period of five years from 14 August 2007 until 14 August 2012. In fact, she remained dependent on her father until at least 23 September 2013. It follows the appellant satisfies the requirements of Regulation 15(1)(b) and she is entitled to a permanent residence card.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside.

The following decision is substituted:

The appeal is allowed under the EEA Regulations.

No anonymity direction is made.

Signed

Date 14 December 2018



Deputy Upper Tribunal Judge Froom