



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/11734/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 29 October 2013

Determination Promulgated  
On 01 November 2013  
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Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARIYA ALACHEVA

Respondent

**Representation:**

For the Appellant: Miss J Isherwood, Senior Home Office Presenting Officer  
For the Respondent: In person

## DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the determination of First-tier Tribunal Judge Telford, who allowed the claimant's appeal against her refusal to issue her with a document certifying her permanent residence in the United Kingdom on the basis that she is an EEA national who has resided in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 for a continuous period of five years, pursuant to regulation 15(1)(a) thereof.
2. The claimant is a Bulgarian citizen, who is married to one Vitaliy Petrovich Demyrov, also a Bulgarian citizen. They have with them in the United Kingdom their two sons, born in 2005 and 2010. No anonymity direction was made or sought before the First-tier Tribunal.
3. The First-tier Tribunal determination refers to a bundle of documents from the Secretary of State and also to a brown paper envelope in the First-tier Tribunal file, which included "UK bank statements dating back to July 2007, NHS GP registration in Maidenhead dating back to 2008, and Child Benefit documents from the UK state dating back to 2008 and 2009". In contrast, the letter of refusal stated that there was 'barely one year's documentation'.
4. The reasoning in the First-tier Tribunal determination is extremely brief and is circular. It is contained at paragraphs 9-11 of the determination and reads as follows:

"9. The [claimant] has shown that the decision was in breach of EEA Regulations 2006. The appeal succeeds. I do not go on to consider Article 8 ECHR.

10. I remind myself that it is for the [claimant] to establish this case on the balance of probabilities. I consider all matters of evidence as distinct but consider them in the round.

11. As for the EEA Regulations 2006, it is plain there is now new evidence the [claimant] in the UK since July 2007. It is a pity that she did not alert the UK authorities of this evidence which would inevitably have led to there being no need for this appeal. "
5. There is no other reasoning in the determination, and in particular, no evaluation of the documents which appear to have been post-decision evidence. The judge found that the Secretary of State's decision was 'not in accordance with law' and allowed the appeal.
6. He noted that no order for anonymity was sought, and made none. He made no order for costs as 'the case was not brought properly' and the claimant 'could have dealt with this by sending in her documents in full from the outset as requested'. He then erroneously refused to make a fee award on the basis that he had dismissed the appeal: it is plain however that his intention was to allow it.

## **Grounds of appeal**

7. The Secretary of State in her grounds of appeal contended that the First-tier Tribunal determination lacked reasoning and permission to appeal was given on that basis.

## **Upper Tribunal hearing**

8. At the beginning of the hearing today I made available to Miss Isherwood the 'brown envelope' documents and retired, to allow her to consider them and to take instructions. Miss Isherwood accepted that the documents, which were before the First-tier Tribunal, did establish that the claimant had been residing continuously in the United Kingdom since at least 2008.
9. In addition it now appears that just a week after refusing the claimant's application, on 13<sup>th</sup> April 2013, the Secretary of State granted the claimant's husband permanent residence in the United Kingdom.
10. Miss Isherwood did not dispute that the proper course was for the claimant to be granted leave in line with her husband. While she did not withdraw the Secretary of State's appeal, neither did she seek to make any submissions, relying upon the grounds of appeal as drafted. The claimant, who appeared in person, was not called upon by me to make submissions.

## **Discussion**

11. The First-tier Tribunal judge's reasoning is plainly inadequate and that lack of reasoning is an error of law. However, having regard to the materials which were before him, I nevertheless decline to set the determination aside because had he reasoned his determination properly, it would have been bound to succeed.
12. The Secretary of State's appeal is therefore dismissed.

## **Direction**

13. I direct that the Secretary of State provide the claimant forthwith with a document certifying her right to permanent residence in the United Kingdom, in line with that of her husband.

Signed

Date

Upper Tribunal Judge Gleeson