



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

Appeal Numbers: IA/43590/2010
IA/43596/2010
IA/43592/2010
IA/43595/2010
IA/43586/2100
IA/43601/2010

THE IMMIGRATION ACTS

**Heard at Field House
On 27 September 2013**

**Determination
Promulgated
On 14 October 2013**
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Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE STOREY**

Between

**ELENA SAIDOVA
MOHAMED ABDEL DAIM ABOU EADA SAID
SANYIA SAIDOVA
SAID SAID
SARAH SAIDOVA
SAFEER SAID**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The second appellant appeared in person
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appealed to a Judge of the First-tier Tribunal against decisions made by the Secretary of State on 15 November 2010 refusing to grant them certificates entitling them to permanent residence in the United Kingdom.
2. The first, third, fourth, fifth and sixth appellants are all citizens of the Czech Republic. The second appellant is a citizen of Egypt. The first appellant arrived in the United Kingdom in 2004. She commenced work but was made redundant in November 2005. Subsequently she received Job Seekers Allowance until she obtained further employment on 1 March 2010 in which employment she remained. She applied for permanent residence on 20 May 2010 and her husband and the children (the second, third, fourth, fifth and sixth appellants) applied in line. Mr Said has health problems and since June 2005 has been in receipt of income support.
3. The judge concluded that the first appellant had not been a qualified person as defined by the Immigration (European Economic Area) Regulations 2006 for five continuous years since her arrival in the United Kingdom. She concluded as a consequence that all the appeals must be dismissed.
4. The appellants sought permission to appeal, arguing that the judge had failed to consider points raised reflecting the argument that the right to permanent residence should not be dependent on being a qualified person, noting what had been said in SSWP v Lassal C-169/09 and in London Borough of Harrow v Ibrahim C-310/08. The point is made in respect of the latter decision that a parent who is the primary carer of children of a national of a Member State who worked or had worked in the host Member State could claim a right of residence on the basis of Article 12 of Regulation 1612/68. Permission to appeal was granted.
5. Thereafter the matter proceeded no further for a little while, since it was anticipated that the decision of the Court of Justice in Alarape would be of assistance to the Tribunal, and the decision of the Court, whose reference is C-529/11, was published on 8 May 2013.
6. By this time the appellants were not longer legally represented. It seems there had been some difficulties with funding, and Mr Said appeared.
7. We are very grateful to Mr Deller who was of considerable assistance to us and also in explaining to Mr Said the legal position. It was agreed that the First-tier Tribunal Judge had erred in law in failing to consider the issue of derived residence rights. It was necessary therefore for us to remake the decision.

8. The essential difficulty faced by the appellants in terms of establishing a right of permanent residence is that Mrs Saidova has only worked in the United Kingdom between September 2004 and November 2005 and then since March 2010 to today. A continuous period of five years' work has therefore not been achieved and the right to permanent residence that would accrue from that is not made out.
9. As we made clear to Mr Said, however, there are other protections for the family. The first is the fact that Mrs Saidova is working at the moment and therefore the family are protected by that continuous employment. More particularly, as a consequence of the decisions in Ibrahim and Alarape, the appellants have derived residence rights under Article 12 of Regulation No. 1612/68 through the fact that the children are in education. It was made clear in Ibrahim at paragraph 59 that the children of a national of a Member State who works or has worked in the host Member State and the parent who is their primary carer can claim a right of residence in the latter state on the sole basis of Article 12 of Regulation 1612/68 without such a right being conditional on their having sufficient resources and comprehensive sickness cover in that State.
10. In Alarape it was said at paragraph 31 that:

“The parent of a child who has reached the age of majority and who has obtained access to education on the basis of Article 12 of Regulation no. 1612/68 may continue to have a derived right of residence under that Article if that child remains in need of the presence and care of that parent in order to be able to continue and to complete his or her education, but it is for the referring court to assess, taking into account all the circumstances of the case before it.”
11. The effect of these decisions is to clarify the derived right for the parties in this case to reside in the United Kingdom during the time when the children (who are all currently in education) remain in education. The youngest child is 10 and therefore it can be anticipated that the derived right will continue for another six years, and of course it is the case that in March 2015 the first appellant will be entitled to apply for permanent residence on having completed by that time, assuming she continues to work, a period of five years in employment. The rest of the family would then be able to make applications for permanent residence also as her family members.
12. The formal outcome of the appeal, therefore, is that the appeal against the decision to refuse permanent residence is dismissed, but the appellants are referred to the above matters indicating the lesser but not

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IA/43595/2010

IA/43596/2010
IA/43592/2010
IA/43596/2100
IA/43601/2010

insubstantial rights which they continue to have. The appeals are dismissed.

Signed

Date

Upper Tribunal Judge Allen