



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15105/2015
IA/17928/2015

THE IMMIGRATION ACTS

Heard at Field House
On 27 October 2017

Decision & Reasons Promulgated
On 30 October 2017

Before

UPPER TRIBUNAL JUDGE FINCH

Between

LOLA ESTHER DANIEL
OHO
(NO ANONYMITY ORDER MADE)

Appellants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No legal representation
For the Respondent: Ms. P. Hastings, Home Office Presenting Officer

DECISION AND REASONS

History of Appeal

1. The 1st Appellant, who was born on 16 March 1973, and the 2nd Appellant, who was born on 23 June 2008, are citizens of Nigeria. The 1st Appellant married her husband, who is a national of Poland, on 27 June 2009 and the 2nd Appellant is a Polish citizen.

2. On 31 March 2015, the 1st Appellant was refused a residence card and the 2nd Appellant was refused a registration certification as confirmation of her right to reside in the United Kingdom.
3. The Appellants appealed and First-tier Tribunal Judge Frankish allowed their appeals in a decision promulgated on 20 January 2017. The Appellants appealed against this decision and on 8 March 2017 First-tier Tribunal Judge Macdonald refused them permission to appeal on the basis that they had not identified any errors of law in First-tier Tribunal Judge Frankish's decision.
4. Upper Tribunal Judge McWilliam granted permission on 11 July 2017 on the basis that it was "arguable that he did not consider whether the 1st Appellant had a permanent right of residence and the findings are arguably confined to consideration of the appeal under regulation 15A".

Error of Law Hearing

5. The Appellants were not legally represented and I asked the Home Office Presenting Officer to make her oral submissions first in order to assist the Appellants. I also gave the Home Office Presenting Officer permission to ask some additional question so as to better understand the basis upon which the Appellants were seeking to appeal. The 1st Appellant then responded. I have referred to this exchange, where relevant, in my findings below.

Findings

6. As noted by First-tier Tribunal Judge Macdonald, the grounds relied upon by the Appellants did not identify any specific errors of law in First-tier Tribunal Judge Frankish's decision. It was also clear that the 1st Appellant's level of understanding of the relevant law was very limited. This had led her to appeal against a decision which was allowed in her favour.
7. The basis of her case appeared to be that she believed that she was entitled to a permanent right of residence under regulation 15 of the Immigration (European Economic Area) Regulations. She relied upon the fact that she had previously had a residence card, which was valid from 6 February 2010 to 6 February 2015, as the family member of an EEA national.
8. However, this was not the basis on which she had applied for permanent residence in November 2014. On the contrary, she had applied on the basis that she was divorced and her marriage had come to an end because of domestic violence. The Respondent did not err in law in refusing this application as she had no evidence of any decree absolute at that time. There was similarly no basis upon which First-tier Tribunal Judge Frankish could have found that she was entitled to a permanent residence as a divorcee who had suffered domestic violence.
9. Furthermore, at the hearing before First-tier Tribunal Judge Frankish the 1st Appellant did not submit that she was entitled to permanent residence on the basis of five years residence as the wife of an EEA national.

10. It was not disputed that the 1st Appellant married a Polish national and paragraph 13 of First-tier Tribunal Judge Frankish's decision indicates that the Home Office Presenting Officer at the hearing conceded that he had been working in the United Kingdom. But there was insufficient evidence to establish that he had been exercising a Treaty right, as a worker, for the necessary five year period. .
11. At the hearing before me the 1st Appellant disclosed that her husband had not been working between 2011 and 2013 as he had been looking after their daughter after the Appellants had been rendered homeless and destitute and the local authority had intervened. Therefore, there is no basis upon which the 1st Appellant is entitled to permanent residence on the basis of her marriage and previous residence.
12. First-tier Tribunal Judge Frankish allowed the appeal under regulation 15A(3) of the EEA Regulations on the basis that the 2nd Appellant was the daughter of an EEA national, was living in the United Kingdom at the same time as that parent and is in education and was in education at a time when her EEA national was in the United Kingdom . As a consequence, the 1st Appellant was entitled to a derivative right of residence for as long as she remained the 2nd Appellant's primary carer and the 2nd Appellant remained a child and in school in the United Kingdom.
13. This is a derivative right of residence and does not provide the 1st Appellant with permanent residence. It will also only persist whilst the 2nd Appellant is an EEA national as opposed to a British citizen.
14. In the grounds of appeal, it was asserted that the 2nd Appellant is a British citizen by reason of her birth but she would only have acquired British citizenship by reason of birth in the United Kingdom under section 1(1) of the British Nationality Act 1981 if her father was settled here at the time of her birth. It would appear from the evidence given today that her father had not acquired permanent residence at the time of her birth. I also note that she was born before her parents were married and, therefore, paternity may also have to be proved.
15. As a consequence, I find that there were no errors of law in First-tier Tribunal Judge Frankish's decision.

Decision

16. The appeals are dismissed.
17. First-tier Tribunal Judge Frankish's decision stands.

Date: 27 October 2016

Nadine Finch

Upper Tribunal Judge Finch