



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/07005/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 August 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

MRS GABRIELLA KONYI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer  
For the Respondent: In person

**DECISION AND REASONS**

1. The Appellant, to whom I shall refer as the Claimant, is a national of Hungary born on 11 November 1973. Along with her husband who is also a national of Hungary, she applied for permanent residence in the United Kingdom on the basis of five years'

continuous residence and exercise of treaty rights. That application was made on 18 April 2017.

2. In a decision dated 28 July 2017, her application was refused on the basis that the Secretary of State was not satisfied that the Claimant had been residing continuously in the United Kingdom in accordance with the Regulations for five years at the date of application. The Claimant appealed against that decision and her appeal came before Judge of the First-tier Tribunal Trevaskis for hearing on 30 January 2018.
3. In a decision and reasons promulgated on 13 February 2018, the Judge allowed the appeal on the basis, firstly, that the Secretary of State's representative confirmed that he no longer wished to rely on the refusal in respect of the assertion that the Claimant and Sponsor were not married, given that he had now seen a copy of their marriage certificate; and secondly, upon production of the P60 for the year 2012 to 2013 which had not previously been provided, it was accepted that the Claimant was able to show evidence of employment for the five year period prior to the application for permanent residence. In light of the Secretary of State's changed position, the Judge allowed the appeal on the basis that he was satisfied to the required standard that the Claimant had been exercising free movement rights for a continuous period of five years ending with the date of application.
4. Permission to appeal to the Upper Tribunal was sought on the basis that the Judge had erred, in that the issue identified in the refusal letter was whether the EEA national partner had been exercising treaty rights for five years and that the appellant was not an EEA national and therefore she must demonstrate that her partner was qualified in accordance with Regulation 6 of the EEA Regulations. Permission to appeal was granted by Judge of the First-tier Tribunal Saffer on the basis it was arguable that the Judge materially erred in relying on the Claimant's P60 as evidence that her EEA spouse was exercising EEA treaty rights.
5. At the hearing before the Upper Tribunal, Ms Pal on behalf of the Secretary of State accepted from the outset that the grounds of appeal were misconceived and had failed to take into account the fact that the Claimant is herself an EEA national, being from Hungary. In light of Ms Pal's helpful and correct acceptance that the grounds of appeal were misconceived, I find no errors of law in the decision of First-tier Tribunal Judge Trevaskis, whose decision allowing the Claimant's appeal is upheld.

### **Notice of Decision**

The appeal by the Secretary of State is dismissed. I uphold the decision and reasons of First tier Tribunal Judge Trevaskis allowing the Claimant's appeal.

No anonymity direction is made.

Signed *Rebecca Chapman*

Dated 7 September 2018

Deputy Upper Tribunal Judge Chapman