Upper Tribunal

(Immigration and Asylum Chamber)

Babajanov (Continuity of residence - Immigration (EEA) Regulations 2006) [2013] UKUT 00513 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 August 2013	.....

Before

UPPER TRIBUNAL JUDGE ALLEN

UPPER TRIBUNAL JUDGE DAWSON

Between

IGOR BABAJANOV

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Miss B Asanovic, Counsel, instructed by Turpin & Miller Solicitors

For the Respondent: Mr N Bramble, Senior Presenting Officer

(1) The right of permanent residence under regulation 15 of the Immigration (European Economic Area) Regulations 2006 is capable of being established whilst a national of a Member State or a family member of that national is outside the host country.

(2) Leaving aside military service, the reasons for that absence must come within regulation 3(2) (which corresponds with provisions 16(3) of Directive 2004/38/EC). The specific reasons set out in regulation 3(2)(c) are not exhaustive, given the phrase “such as”, which precedes them; but the absence must be for “an important reason”.

(3) Accordingly, in determining whether a period of absence falls within regulation 3(2)(c), regard must be had to the purpose giving rise to that absence. The purpose needs to be of an importance comparable to those specified in regulation 3(2)(c) and involve (i) compelling events and/or (ii) an activity linked to the exercise of Treaty rights in the host country.

DETERMINATION AND REASONS

ERROR OF LAW

1.
We found an error of law in the determination of the First-tier Tribunal for reasons given in our decision dated 22 May 2013 which was in these terms:

“1. The claimant, who is a citizen of Azerbaijan born 11 May 1991, appeals with permission the decision of First-tier Tribunal Judge Hart TD who dismissed his appeal against the Secretary of State's decision dated 19 April 2012 refusing to issue a document certifying permanent residence by the claimant in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (as amended).

2. The claimant was the second appellant in the appeal before the First-tier Tribunal; his mother, also a national of Azerbaijan, succeeded on the basis of the judge’s finding that she had acquired and not lost her right of permanent residence.

3. The short immigration history of the parties is that the claimant's mother married an Irish national called Thomas McLean on 17 May 2003. They had met in Azerbaijan. In June 2003 he returned to the United Kingdom. The claimant and his mother were issued with a family permit and travelled to the United Kingdom on 30 April 2004. They had previously been in Ireland for a period that year. Residence cards were issued to the claimant and his mother on 8 August 2005 due to expire in July 2010 and the family took up residence in this country. On 7 August 2008 the family, including the claimant, travelled to Ireland where his mother gave birth to a daughter born 8 February 2009. She returned with her daughter to the United Kingdom on 2 April 2009. The claimant remained in Ireland until he returned to the United Kingdom in June 2010. He endeavoured unsuccessfully to find employment in Ireland. He also undertook a course of study.

4. Following expiry of the residence cards for the claimant and his mother, in July 2010 applications were made for new residence cards which were issued in March 2011 following a successful appeal against an initial refusal which was heard on 4 February 2011. The First-tier Tribunal Judge found that Mr Mclean was a qualified person between June 2003 and August 2008.

5. On 3 January 2012 the claimant’s mother ceased cohabiting with Mr Mclean following a deterioration in their marriage from July 2011. The claimant (who turned 21 on 10 May 2012) and his mother applied for permanent residence cards on 19 March 2012.

6. In allowing the appeal by the claimant’s mother the judge concluded that by 30 April 2009 (and thus after she had returned to the United Kingdom); (i) she had acquired a permanent right of residence and, (ii) had not been absent from the United Kingdom since then save for brief visits between 16 May and August 2009 to her husband's parents in addition to visits which she had made to Russia. The judge was satisfied that all these visits were less than two years and as a consequence she had not lost her right to permanent residence.

7. As to the claimant, after considering the decision by the Court of Justice of the European Union in Dias (European citizenship] [2011] 21 July 2011 and the accompanying opinion of the Advocate General, the judge reached these conclusions:

(i) The claimant was the dependant child of his mother who was the spouse of an EEA national and that until 10 May 2012 he was the direct descendant of his mother and aged under 21.

(ii) The claimant’s absence in Ireland had been for 22 months and that this exceeded permitted absences of six months and exceptionally, twelve months (with reference to Regulation 15 of the 2006 Regulations).

(iii) It was accepted that (these absences) broke the continuity of the claimant’s residence in the United Kingdom as the dependant child of Mr McLean’s spouse.

(iv) Having now reached the age of 21, ceased education and established his own independent life, it was not asserted that the claimant remained dependent upon either Mr McLean or his mother.

8. The judge noted argument from the claimant’s counsel that these absences should not bar him from a right of permanent residence, however he went on to find that the claimant's residence in the United Kingdom was broken when he travelled on 7 August 2008 to Ireland and did not return until June 2010 during which he had lived with his stepfather’s parents and had undertaken education.

9. According to the judge, the inherent difficulty in the claimant’s case was that he had not resided in the host member state for a period of 22 months and was not therefore integrated in this country for that period. The judge did not consider the decision in Dias to be authority for adding together two separate periods of residence in one country, “interspersed with a long continuous gap overseas to assemble a period for five years continuous residence”.

10. An argument based on proportionality was also advanced by the claimant's counsel based on him having attained a significant degree of integration in the United Kingdom. This did not persuade the judge who considered it a stumbling block that he had “... not acquired a degree of integration in the United Kingdom when he spent 22 months in Ireland returning only in June 2010”. Whilst acknowledging the concept of proportionality in reg. 21 of the 2006 Regulations. he did not consider that this applied to the grant of recognition of permanent residence after a period for absence “... which does not comply with the precise Regulations”.

11. We heard argument from Miss Asanovic supported by a detailed skeleton argument and a reply from Mr Bramble who acknowledged some difficulties with the judge’s determination but steadfastly maintained that such errors were not material. We announced our decision at the hearing that we were satisfied the judge had made a material error of law on the first ground advanced by Miss Asanovic and adjourned the case for a further hearing in order to remake the decision, taking account of any new evidence the claimant wished to produce about his stay in Ireland and further argument on the second ground.

12. The reasons for our decision are as follows.

13. In respect of the first ground, Miss Asanovic was content that reg. 3(2) correctly transposed Article 16 of the Directive 2004/58/EC. The only discernible difference is that Article 16(3) provides that “continuity of residence shall not be affected by temporary absences ....” whereas Regulation 3(2) provides that, “Continuity of residence is not affected by ...”

14. We therefore will consider this appeal in accordance with the terms of the 2006 Regulations. Relevant to our decision are Regulations 15 and 3(2) as follows:

‘Regulation 15 – Permanent right of residence

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

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

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

(2) [The] right of permanent residence under this Regulation shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years.”

15. Regulation 3(2) provides:

(2) Continuity of residence is not affected by –

(a) periods of absence from the United Kingdom which do not exceed six months in total in any year;

(b) periods of absence from the United Kingdom on military service; or

(c) any one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and child birth, serious illness, study or vocational training or an overseas posting.’

16. The first ground of application argues that no formal admissions were made to the effect that it had been admitted that the continuity of residence had been broken by the claimant’s absence for 22 months in Ireland. We accept this having regard to the subsequent findings by the judge at [60] that the claimant’s residence in the United Kingdom was broken by the Irish absence. There would have been no need for such a finding to be made had there been a concession.

17. In her oral argument, Miss Asanovic distinguished presence from residence so that a period of absence from the United Kingdom did not of itself break “residence”. She argued that neither the Directive nor the Regulations states that temporary absences longer than those provided for in reg. 3(2) automatically broke continuity of residence. Whether it did or not was a matter to be determined by the Member State with a view to the principles of proportionality and the purpose of Article 6 of the Directive being applied. The examples provided in reg. 3(2) are not exhaustive.

18. We will need further argument on the approach urged on us by Miss Asanovic on the meaning of “residence”. However we are satisfied that the judge did not turn his mind specifically to this and he appears to have proceeded on the basis that residence in the United Kingdom equates to presence here and failed to consider whether it was possible for the claimant to retain residence in the United Kingdom within the meaning of the 2006 Regulations whilst absent. We will to hear further on whether an absence of longer than the twelve months referred to in reg. 3(2) means, without more, that continuity of residence is broken.

19. The further issue that needs to be considered is this. If the claimant is able to establish that he had not lost his residence in the United Kingdom during the first nine of the 22 months he was away in Ireland (having regard to the reasons for his absence), had he acquired a right of permanent residence whilst outside the country which was not undermined by his continuing absence which in total did not exceed two months? The findings of fact of the judge are not sufficiently clear for us to confidently address this point and hence the need for further evidence.

20. The second ground raises the issue that even if there had been a technical break in the continuity of residence, could the claimant aggregate periods spent in the United Kingdom before and after his 22 months’ absence. We will need to consider this possibility which will only arise if the claimant fails

to establish that he had not broken continuity of residence by the time nine months had expired into his stay in Ireland by when, coupled with his previous residence in the United Kingdom for four years three months, he had been resident in the United Kingdom for five years or alternatively had not broken his continuity of residence at all due to the reasons for his absence.

21. A Preliminary Ruling on interpreting the two conditions for the acquisition of the right under Article 16(3) Sub-Directive 2004/38/EC has been sought and we shall give further consideration this at the resumed hearing.

22. That hearing is to take place on 19 August 2013 at 10 a.m. with half a day set aside for this purpose.

23. The claimant is directed to file with the Upper Tribunal and serve on the respondent any new evidence (including witness statements of any witnesses who are to be called which should stand as the evidence in chief) no later then 14 days before 19 August 2013."

RE-MAKING THE DECISION – THE EVIDENCE

2.
At the resumed hearing on 19 August we heard evidence from the claimant and his mother. They were accompanied by Mr Maclean but he was not tendered. We reserved our determination.

3.
Although there were some discrepancies in the evidence that emerged in the course of hearing when considered with that given before the First-tier Tribunal and as between the witnesses at the hearing before us, Mr Bramble did not take any issue on credibility. We consider that he was sensible to do so as the inconsistencies principally arose out of the claimants' understanding of matters when he was a minor.

4.
The time frame of events is important in this appeal. The relevant dates are set out in paragraphs 3 to 5 of our error of law decision above. Reminding us of the most significant dates, 30 April 2009 was the fifth anniversary of the arrival of the claimant and his mother in the United Kingdom with a family permit. By then the claimant's mother had returned to the United Kingdom and will have benefited from the decision of the First-tier Tribunal that by 30 April 2009 she had acquired a right of permanent residence which she had not lost through any absence. The claimant joined his mother in the United Kingdom in June 2010 following a completion of a course of study in Ireland. By then he had been outside the United Kingdom for 22 months.

5.
Taking into account the evidence we heard at the hearing and the statements adopted, the following core facts have been established:

(i)
Whilst in the United Kingdom the claimant studied at John Mason School from 2004 until 2008 when he was awarded certain GSCEs.

(ii)
The decision to go to Ireland in August 2008 was made jointly by the claimant's mother and his stepfather, the purpose being that she should give birth there. Their daughter was born 8 February 2009.

(iii)
The claimant as a minor travelled to Ireland on his mother's passport. Her wish was that he should not be idle and wanted him to work or study. The claimant endeavoured to enrol at a college in Ireland for a higher diploma course in March 2009. The college considered he was not suitable for that course and he therefore pursued a foundation course at the Ballyfermot College of Further Education in Art evidenced by an award dated 7 July 2010 with results ranging from distinction (for 6 units) merit (for 2) and pass (for 1) all of which were assessed in May 2010. The course fees were paid by the claimant's mother and stepfather.

(iv)
The claimant's mother visited the United Kingdom on occasion whilst she was in Ireland. The claimant received his own Azerbaijan passport before his graduation but he did not accompany his mother on those visits. He understood that he did not return with his mother in March 2009 because she could not afford for him to travel with her. Her explanation was that there was no accommodation available for her son as she planned to stay with a friend. Her long term plan was for him to return to the United Kingdom. She had not given thought to any financial implications of her son accompanying her.

(v)
On his return to the United Kingdom in June 2010 the claimant re-established contact with his close friends whose identities he gave at the hearing. The claimant has had a succession of jobs since his return, the most recent involving accounting work in a bingo hall.

6.
We conclude that by the time the claimant and his mother left the United Kingdom, they were integrated here and had built up connections. The purpose in going to Ireland was only a temporary one. Why the claimant did not return with his mother was for a combination of reasons and it appears on balance that the absence of suitable accommodation and the desirability that the claimant should complete the course of studies he was pursuing were the principal ones.

THE ISSUES

7.
Echoing the issues we identified in our error of law decision and taking account of Miss Asanovic's most recent skeleton argument we need to address the following questions:

(i)
Did the claimant remain continuously resident in the United Kingdom for the purposes of Directive 2004/38/EC ("the Citizens Directive") and the Regulations on 30 April 2009 notwithstanding his presence in Ireland?

(ii)
If so, would the claimant have acquired by 30 April 2009 a right of permanent residence in the United Kingdom?

(iii)
What is the effect on any right of permanent residence the claimant may have had of his mother returning to the United Kingdom without him, one month before the fifth anniversary?

(iv)
On the assumption the claimant had acquired a right of permanent residence by 30 April 2009 what is the effect on that right of the claimant continuing to live in Ireland until June 2010?

(v)
If the claimant is unable to demonstrate that by virtue of his absence from the United Kingdom from August 2008 or from his mother returning in March 2009, can the periods of residence in the United Kingdom disregarding the interlude in Ireland be aggregated for the purposes of establishing a right of permanent residence?

8.
We were referred to a number of authorities including

(a)
Lassal [2010] EUECJ Case C- 1629/09

(b)
Tsakouridis [2009] EUECJ Case C – 145/09

(c)
Dias [2011] EUECJ Case C-325/09

(d)
Onuekwere (Imprisonment – residence) [2012] UKUT 00269 (IAC)

(e)
Essa (EEA: rehabilitation – integration) [2013] UKUT 00316 (IAC)

(f)
Teixeira [2010] EUECJ Case C-480/08

SUBMISSIONS

9.
In the course of her submissions, Miss Asanovic confirmed there was no authority on the question whether a permanent right of residence in the host country can be acquired whilst someone is outside the host country.

10.
We have set out above the relevant Regulations in paragraphs 14 and 15 of our error of law decision but we repeat them for ease of reference below:

“Regulation 15 – Permanent right of residence

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

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

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

…

(2) [The] right of permanent residence under this Regulation shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years.”

Continuity of Residence

3. (1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under regulation 5(1) and regulation 15.

(2) Continuity of residence is not affected by –

(a) periods of absence from the United Kingdom which do not exceed six months in total in any year;

(b) periods of absence from the United Kingdom on military service; or

(c) any one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and child birth, serious illness, study or vocational training or an overseas posting."

11.
As we observed in the error of law decision there is only a minor difference between the provision in Article 16 of the Citizens Directive and the above Regulations (shall in lieu of is) in Article 16(3). The full text of Article 16 is as follows:

"Article 16

General Rules for Citizens and their Family Members

1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

2. Paragraph 1 shall apply also to family members who are not nationals of a member state and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3. Continuity of residence shall not be affected by temporary absences not exceeding a total number of six months a years, or by absence of longer duration for compulsory military service, or by one absence of a maximum twelve consecutive months for important reasons such as pregnancy and child birth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years."

12.
We were also directed to recitals in the preamble to the Directive by Mr Bramble:

"17. Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State will strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union. A right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host member state in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.

18. In order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once attained shall not be subject to any conditions."

13.
In summary Mr Bramble’s submissions were

(i)
When read with Recital 17 of the preamble, Article 16 has as a key element a choice to settle long term (in the host country) and the Directive is quite clear as to the level of integration required.

(ii)
The categories in reg 3(2) were exhaustive.

(iii)
Any time spent outside the United Kingdom cannot count towards the qualifying period except for reasonable absences.

(iv)
If the absence exceeds the periods provided for in Reg. 3(2) there is no opportunity to aggregate and the accumulation must begin again.

(v)
Such rights as the claimant had acquired before leaving for Ireland had been lost and he therefore cannot succeed in obtaining a right of permanent residence.

(vi)
With reference to the decision in Dias, the claimant’s absence for 22 months resulted in him losing his rights. This receives support from the decision in Onuekwere .

(vii)
With reference to Reg. 15(1)(b) there is no difference between presence and residence.

14.
Miss Asanovic developed aspects of her most recent skeleton argument in the course of her submissions. In summary the skeleton argues:

(i)
There is nothing on the face of the Directive to state that a person must be present in the Member State in order to claim the right of permanent residence. It is contrary to the basic principles of interpretation of Union law to interpret this differently. An interpretation contrary to residence not being equated with presence would deprive the national of residence which includes absences of its meaning in the context of Article 16. This provides that some absences would count and some would not.

(ii)
Given that the purpose of permanent residence is integration, how can it be said that a person who had an unbroken period of residence with no absences during four years followed by twelve months for important reasons is less integrated than the person who was present in the member state for two years, absent for one and then present for another two years with reference to the analysis of purpose in Teixeira at [38]? Such an interpretation would deprive the provision for permitted absences of any useful effect. If that approach is adopted no anomaly is created, given that once one has acquired a permanent rights of residence, loss of that right by virtue of loss of level of integration is by reference to an absence of more than two years.

(iii)

As to whether the claimant's continuity of residence in the United Kingdom was interrupted having regard to his mother returning on 2 April 2009 (an absence of seven months and 26 days) and the claimant remaining for an additional 28 days before qualifying for permanent residence, it is disproportionate to assess that additional absence as not falling into the category of permitted absences. Had the claimant returned with his mother on 2 April 2009 to the United Kingdom and gone back to Ireland to commence and complete his studies, he would have also acquired permanent residence and his subsequent absence would have been immaterial. The claimant had not taken any steps which reflected an intention of living in Ireland nor had he become integrated there and his absence in any event was less than twelve months in duration.

(iv)
The right of residence for the claimant is a reflection of the purpose of maintaining family unity of a migrant worker's family in the context of which the principle of freedom of movement for workers must be given a broad interpretation, see Lassal .

(v)
Dias is authority for the proposition that "the integration objective which lies behind acquisition of the right of permanent residence ... is based not only on territorial and time factors but also on qualitative elements relating to the level of integration in the host Member State". [64] There is nothing about the claimant's presence in Ireland the United Kingdom to 30 April 2009 that indicates that he lost his integration in the UK.

(vi)
In the alternative the whole period of 22 months he was absent needs to be assessed on the basis of the principles in Tsakouridis and the conclusion of the court at [33]:

'The national authorities responsible for applying Article 28(3) of the Directive 2004/38 are required to take all the relevant factors into consideration in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State. It must be ascertained whether those absences involved the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.'

(vii)
As to whether the period of residence can be aggregated, the principles in Dias at [62] are applicable to the present situation for the claimant and with reference to Essa which provides that for the purposes of the qualifying period of residence periods before and after incarceration can be aggregated.

(viii)
This remains the case if there had been an absence for an important reason, where the centre of one's life had not moved elsewhere (Tsakouridis) and the quality of integration had not been compromised through absences (Dias).

15.
Miss Asanovic's skeleton ends with a request for a reference broadly along the lines that when interpreting the conditions for the acquiring of the right under Article 16(3) is the National Court obliged to interpret permissible periods of absence which have no impact on acquisition of permanent residence literally as being no longer than twelve months in duration or assess them in the light of their length, purpose and impact on the quality of the integration. This short summary does not do

justice to the detailed points of reference which we have been invited to make. We indicated to Miss Asanovic that if our view is that reference is required, we would invite further submissions from the parties.

OUR CONCLUSIONS

16.
Article 16(3) of Directive 2004/58/EC provides that continuity of residence for the purposes of establishing a right of permanent residence shall not be affected by temporary absences which do not exceed a total of six months a year. There is no requirement to explore the purpose or reason for that absence which is described solely with reference to the duration of time. Longer absences for an undefined period for compulsory military service are also deemed not to affect continuity of residence. Separate from these two categories is a third which provides that one absence of a maximum of twelve consecutive months shall not affect continuity of residence, "... for important reasons such as pregnancy and child birth, serious illness, study or vocational training or a posting in another Member State or third country".

17.
We consider that the right of permanent residence under regulation 15 of the Immigration (European Economic Area) Regulations 2006 is capable of being established whilst a national of a Member State or a family member of that national is outside the host country provided the reasons for the absence come within Article 16(3) (and reg 3(2)). The reasons in these provisions are not exhaustive in the light of the reference to "such as" (reg 3 (2)(c)) but the absence must be for an important reason. For the interpretation of that phrase, regard needs to be had to the purpose giving rise to the absence. The purpose needs to be of a kind comparable to those illustrated which embrace compelling events and/or an activity which by implication, is linked to the exercise of treaty rights in the UK. The reason should be sufficiently compelling to require the Union citizen (or family member) to leave the host Member State for a purpose connected with his continued integration in that Member State or for a reason that is triggered by considerations of importance that need to be met notwithstanding that integration.

18.
As observed in Dias (where the court notes the Opinion of the Advocate General) at [64]:

"In that regard, it should be noted as the Advocate General has stated in points 106 and 107 in her Opinion, that the integration objective which lies behind the acquisition of the right of permanent residence laid down in Article 16(1) of the Directive 2004/38 is based not only on territorial and time factors but also on qualitative elements, relating to the level of integration in the host Member State."

19.
It follows therefore that the purpose of absence of not more than twelve months must be examined in the light of the degree of integration present in the host Member State before the absence and the manner in which that integration has been affected by the absence.

20.
In the case of the claimant, he was a minor at the time his mother decided to go to Ireland to give birth. Her decision to go to Ireland was for a reason provided for in Article 16(3) (and reg 15). As her son and a minor, the claimant was not taking a decision of his own in travelling with her to Ireland. Her decision to return to the United Kingdom without the claimant seven months and twenty six days after her departure did not arise out of a decision by her that he should remain in Ireland permanently

but because there was inadequate accommodation for him in the United Kingdom. The further reason was because of the time which had already been invested in the claimant pursuing a course of studies.

21.
Accordingly we are satisfied that the decision by the claimant’s mother that he should accompany her to Ireland did not result in a break in the continuity of his residence in the United Kingdom and furthermore her decision to return to the United Kingdom without him similarly did not result in a break of the continuity of his UK residence. We have quoted above in our summary of the submissions from Miss Asanovic the relevant passage from Tsakouridis at [33]. We are satisfied there was not a transfer of parental responsibility from the claimant's mother to another party and accordingly the fact that the claimant did not accompany his mother did not mean that by 30 April 2009 he had broken the continuity of his UK residence.

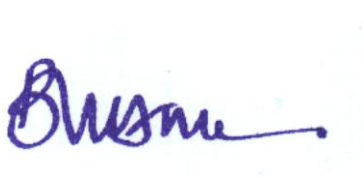
22.
Since the circumstances of the claimant fall within regulation 3(2) we are satisfied that by 30 April 2009 the claimant had acquired a right of right of permanent residence in the United Kingdom.

23.
The next question relates to the impact on that right of the claimant's continued absence from the United Kingdom until June 2010. Article 16(4) (and regulation 15 (1A)(2)) provides the answer. We do not consider it necessary therefore to examine the nature of the claimant's absence after he acquired the right of permanent residence unless it can be said he was away for more than 24 months. He returned 22 months after his departure and accordingly had not lost his right of permanent residence.

24.
In the light of these findings it is unnecessary for us to journey further into the questions posited at [7].

25.
For the reasons we have given above the First-tier Tribunal made an error of law. We set aside its decision insofar as the appeal by the claimant is concerned. We allow his appeal.

Signed Date 2 October 2013



Upper Tribunal Judge Dawson