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THE SOCIAL SECURITY COMMISSIONERS

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Commissioner's Case Nos: CIS/1304/1997 and CJSA/5394/1998

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SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

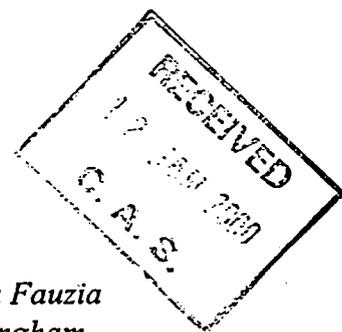
SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

APPEALS FROM DECISIONS OF APPEAL TRIBUNALS ON A QUESTION OF LAW

DECISIONS OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER JACOBS



CIS/1304/1997

Claimant: Salma Fauzia
Tribunal: Birmingham
Tribunal's Case No: 4/01/96/05557

CJSA/5394/1998

Claimant: .
Tribunal: .
Tribunal's Case No: .

Decisions:

CIS/1304/1997

- 1. My decision in this appeal is as follows. It is given under section 14(8)(a)(i) of the Social Security Act 1998.
- 1.1 The decision of the Birmingham Social Security Appeal Tribunal held on 5th June 1996 is erroneous in point of law. See paragraph 14.
- 1.2 Accordingly, I set it aside and, as I can do so without making fresh or further findings of fact, I give the decision that the tribunal should have given.
- 1.3 My decision is:

The claimant resumed her habitual residence in the United Kingdom on her return to the United Kingdom on 13th February 1996 and was habitually resident here when she claimed Income Support on 14th February 1996.

I have given a decision on the only issue arising on the appeal. The Secretary of State will now determine whether the other conditions of entitlement to an award of Income Support are satisfied. If the claimant is not satisfied with the Secretary of State's decision, she will have the right to appeal against the decision to an Appeal Tribunal.

CJSA/5394/1998

- 2. My decision in this appeal is as follows. It is given under section 14(8)(a)(i) of the Social Security Act 1998.
- 2.1 The decision of the Bolton Social Security Appeal Tribunal held on 28th October 1998 is erroneous in point of law. See paragraph 14.
- 2.2 Accordingly, I set it aside and, as I can do so without making fresh or further findings of fact, I give the decision that the tribunal should have given.
- 2.3 My decision is:

The claimant resumed his habitual residence in the United Kingdom on his return to the United Kingdom on 7th August 1998 and was habitually resident here when he claimed a Jobseeker's Allowance on 13th August 1998.

I have given a decision on the only issue arising on the appeal. The Secretary of State will now determine whether the other conditions of entitlement to an award of a Jobseeker's Allowance are satisfied. If the claimant is not satisfied with the Secretary of State's decision, he will have the right to appeal against the decision to an Appeal Tribunal.

The appeals to the Commissioner

3. These are appeals by claimants to a Commissioner against the decisions of Social Security Appeal Tribunals. One appeal was brought with the leave of a Commissioner, the other with the leave of the tribunal's chairman. At first, the adjudication officer did not support the appeals. However, following the decision of the House of Lords in Nessa v. Chief Adjudication Officer [1999] 4 All England Law Reports 677, the adjudication officer supported the appeals, submitting that each claimant resumed habitual residence in the United Kingdom immediately on return.

Changes made by the Social Security Act 1998

4. The Social Security Act 1998 is being brought into force in stages over this summer and autumn. It came into force so far as Jobseeker's Allowance is concerned on 18th October 1999 and so far as Income Support is concerned on 29th November 1999. The Act abolished the title and status of adjudication officers, transferring their functions to officers acting in the name of the Secretary of State. From the relevant date, the Secretary of State replaced the adjudication officer as a party to these appeals. Apart from this, the changes under the 1998 Act have not affected the claimants' appeals to the Commissioner or their outcome.

The oral hearing

5. I held a joint oral hearing of these appeals on 13th December 1999. The claimants did not attend, and were not represented at, the hearing. The Secretary of State was represented by Miss Powick of the Office of Solicitor to the Departments of Health and Social Security. The decisions I have given in these appeals agreed with the written submissions of the adjudication officers that were made following the decision of the House of Lords in Nessa. The purpose of the hearing was to discuss the reasoning on which the decisions were based and in particular the application of the principles set out by the House of Lords to persons returning to this country following a period of absence abroad during which they lost their habitual residence here. I am grateful for Miss Powick's arguments on this uncertain area of law.

The history of the cases

CIS/1304/1997

6. Although her family originates from Pakistan, the claimant was born in Birmingham and has British nationality. She was brought up and educated in this country. She visited Pakistan at the age of 11, in 1988. She went there again in November 1994. During that visit, she married. She became pregnant and was unwell. She was advised not to travel. Her daughter was born there in November 1995. She returned to the United Kingdom on 13th February 1996 and claimed Income Support on 14th February 1996. She came with her daughter, but her husband remained in Pakistan for the rest of the year in order to finish his education. He intended to join her after that.

7. The adjudication officer refused the claim for Income Support on the ground that the claimant was not habitually resident in the United Kingdom. The claimant appealed against

that decision. She also made a fresh claim for Income Support in which the adjudication officer accepted that the claimant had become habitually resident in the United Kingdom by 14th May 1996. So, the question for the tribunal was: was the claimant habitually resident in the United Kingdom between 13th February 1996 and 13th May 1996? The tribunal decided that she was not. Although it was not worded in these terms, the reason for the tribunal's decision was clearly that the claimant had to satisfy an appreciable period of residence before she re-established her habitual residence in the United Kingdom. That reasoning was in accordance with a line of decisions by Commissioners, although there was also authority that supported a different approach.

CJSA/5394/1998

8. The claimant's family originates (as far as I know) from Britain and he has British nationality. In February 1993, he left the United Kingdom in order to find work. He first worked in Hong Kong and then, being unable to find work in the United Kingdom, in Malaysia. He was away for 5½ years, during which he returned twice a year. He retained his property here and paid the mortgage while he was abroad. For at least part of his absence, the property was let. He also put his household goods into store. His work in Malaysia came to an end at the expiry of his contract there. He needed work to support his family. He returned because he considered his prospects better here than there in view of the economic conditions in each country. He tried to find work in the United Kingdom before returning. He arrived here on 7th August 1998 and claimed a Jobseeker's Allowance on 13th August 1998.

9. The adjudication officer refused the claim for a Jobseeker's Allowance on the ground that the claimant was not habitually resident in the United Kingdom. The claimant appealed against that decision. The tribunal decided that he was not habitually resident immediately on his return, but that he became habitually resident on 28th October 1998, the date of the hearing of the appeal. The reason for the tribunal's decision was that the claimant had to satisfy an appreciable period of residence before he re-established his habitual residence in the United Kingdom.

The question arising for decision

10. These appeals raise the question whether each of the claimants was at any relevant time a "person from abroad" as defined in regulation 21(3) of the Income Support (General) Regulations 1987 and 84(4) of the Jobseeker's Allowance Regulations 1996. The significance of this question is that if the claimant is a person from abroad, the applicable amount used to calculate the amount of any entitlement is nil (see paragraph 17 of Schedule 7 to the Income Support Regulations and paragraph 14 of Schedule 5 to the Jobseeker's Allowance Regulations), thereby depriving the claimants of any entitlement to benefit. If the claimants are not persons from abroad, their entitlement to benefit and, in particular, their applicable amounts are calculated on normal principles. In these cases, the answer to this question depends on the date from which the claimants became habitually resident in the United Kingdom.

Habitual residence of returning former residents

11. Where, as here, a claimant has previously lived in the United Kingdom, the following questions may arise.

- 11.1 Was the claimant habitually resident in the United Kingdom on the day of last departure?
- 11.2 If so, did the claimant cease to be habitually resident in the United Kingdom immediately on departure or while abroad? If not, the claimant retained habitual residence here and was habitually resident on the day of return.
- 11.3 If the claimant did not retain habitual residence in the United Kingdom, when was habitual residence resumed here? This may involve two questions: (a) when did the claimant re-establish residence here and (b) when did it become habitual?

Retained habitual residence

12. The adjudication officer in CIS/1304/1997 submits that the claimant may have retained her habitual residence here during her absence. I reject that argument. I accept that the circumstances in which the claimant left for Pakistan were consistent with her retaining her habitual residence in the United Kingdom. The tribunal found that she went temporarily on holiday. It may be that a marriage during her stay was always intended or at least envisaged, but the tribunal did not find that and I deal with the case on the tribunal's findings of fact. However, the circumstances which arose while she was away, especially the length and continuity of her absence, were not consistent with habitual residence here. So, at some time during her absence, she ceased to be habitually resident in the United Kingdom.

13. The adjudication officer in CJSA/5394/1998 does not argue that the claimant retained his habitual residence here during his absence and submits that it would be unusual if this were the case for an absence of more than 5 years. I accept that submission. The circumstances in which the claimant left the United Kingdom and the period of his absence were not consistent with his retaining his habitual residence in the United Kingdom. So, he ceased to be habitually resident in the United Kingdom on the day of his departure. Habitual residence can be lost in a single day.

Resumed habitual residence

14. So, both claimants did not have retained habitual residence on their return to the United Kingdom. The question arises: when did they resume habitual residence here? The answer depends on the decision of the House of Lords in Nessa. This decision was given after the decisions by the tribunals. Inevitably, the tribunals did not consider the law as set out in that case. Obviously, they cannot be criticised for that. Nevertheless, the decision of the House of Lords applies retrospectively with the effect that the tribunals' decisions are erroneous in law for failing to consider the appeals in terms of the law as laid down in that case.

15. Nessa is the authoritative decision on the habitual residence in the Income Support, and equivalent Jobseeker's Allowance, legislation. In particular, it is the authoritative decision on resumed habitual residence. So, it is inevitable that the speech of Lord Slynn, with which the other Law Lords agreed, must be subjected to close scrutiny. Of course, judgments, even speeches in the House of Lords, must not be read as if they were legislation. I trust that I have not gone that far.

16. Whether or not a person is habitually resident in the United Kingdom is a conclusion drawn by an exercise of judgment on a variety of factors the significance of each of which can only be determined in the context of the others with none being decisive. In legal terms it is a question of fact and degree or, in the useful phrase of Jessel MR in Erichsen v. Last (1881) 8 Queen's Bench Division 414 at page 416, "a compound fact made up of a variety of things." So, in its operation it is inherently uncertain: see paragraph 53 of the Law Commission's Working Paper No. 28 and paragraph 16 of the opinion of Advocate General Saggio in Swaddling v. Adjudication Officer [1999] All England Law Reports (European Cases) 217, where he commented that "habitual" did not enlighten, but engendered speculation as to its meaning. This has two consequences. First, anyone who seeks certainty in the meaning and application of "habitual residence" will not find it in this decision or anywhere else. Second, it restricts the circumstances in which a tribunal's decision may be erroneous in law. The most authoritative statement of those circumstances is the speech of Lord Fraser in the House of Lords in G. v. G. [1985] 2 All England Law Reports 225 at pages 228 to 230. The House of Lords has recently reaffirmed that

"An appellate court should resist any temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

See the speech of Lord Hoffmann in Piglowska v. Piglowski [1999] 3 All England Law Reports 632 at page 644.

Persons returning to the United Kingdom

17. Nessa decided that the normal rule was that habitual residence could not be established until a person had been resident in the United Kingdom for an appreciable period. However, the House of Lords recognised that there might be exceptions. One was set out by Lord Slynn at page 683.

"There may indeed be special cases where the person concerned is not coming here for the first time, but is resuming an habitual residence previously had (Lewis v Lewis [1956] 1 All ER 375 and Swaddling v Adjudication Officer [1999] All ER (EC) 217). On such facts the adjudication officer may or of course may not be satisfied that the previous habitual residence has been resumed. This position is quite different from that of someone coming to the United Kingdom for the first time."

18. It is clear from that passage that a person who has previously been habitually resident will not automatically become habitually resident again on arriving back here. The question is: in what circumstances will habitual residence be resumed without the need for residence for an appreciable period? As the criteria to be applied in answering this question are not

readily apparent from common experience or from the terms of the question itself, it is appropriate for a Commissioner to lay down guidance for the benefit of Appeal Tribunals and the officers who act on behalf of the Secretary of State.

19. An obvious starting point for identifying these criteria might appear to be the cases cited by Lord Slynn. Unfortunately, they do not help. Swaddling was a decision on European law: see paragraphs 20 to 21. Lewis may be one of those cases envisaged by Lord Slynn (at page 682) as another possible exception to the normal rule that an appreciable period of residence was required.

“There may be cases where for the purposes of making particular legislation effective (as for founding jurisdiction), it is necessary that a person should be habitually or ordinarily resident in some state at any one time. In other words, there cannot be a gap.”

This may be an example of the legislative context affecting the meaning of the concept, as recognised by Lord Slynn at page 681.

The European concept of habitual residence

20. Habitual residence as a concept is not unique to the law of the United Kingdom. It is used in Continental law and in European law. Miss Powick argued that the concepts of habitual residence in domestic law and in European law were the same. This argument has to be applied to the British concept as a whole. There is no support in Nessa for two different concepts of habitual residence, one applying to those who have been habitually resident here before and the other applying to those who have not. I am not prepared to go so far as to decide that the European concept applies to replace the British concept for these reasons.

20.1 It would not be helpful, because the scope and nature of the concept in European law is uncertain. The reasoning of the European Court of Justice in Swaddling is stated in terms that are closely tied to the specific facts of that case. The other cases of the European Court in which the concept has been discussed throw little further light on it. This may reflect the essentially factual nature of the concept of habitual residence in the law of the European Continent: see note 3 to paragraph 705 of Volume 8(1) of Halsbury's Laws of England (4th edition).

20.2 In the domestic laws of member states on the Continent habitual residence is treated as a pure question of fact, whereas in our domestic law it has been the subject of definition in case law. The concept used by the European Court seems similar to the domestic Continental position. Certainly, that Court has never embarked on a definition as the British cases have. So, the European concept cannot simply be transferred into our domestic law without accepting the constraints of precedent. The reasoning in Lord Slynn's speech built on existing case law and is not authority for replacing it.

20.3 It would be dangerous, because of the uncertainty of the European concept. Setting out a general principle would carry the danger that some European aspect of habitual

residence or its application would be identified which was not appropriate in the context of the Income Support and Jobseeker's Allowance legislation.

- 20.4 The definition and application of the concept in European law may be affected by the context. First, in European law it has a European meaning independent of its meaning in the domestic law of the member states: see paragraph 16 of the opinion of Advocate General Saggio in Swaddling. Second, the application of the concept in the circumstances of Swaddling may have been influenced by the right to freedom of movement. Certainly, this was the context in which the question arose and the Court's formal answer to the Commissioner's question on the reference was stated in those terms. Likewise in the law of the United Kingdom, habitual residence "may take a shade of meaning from the context and the object and purpose of the legislation" in which it is used: see Lord Slynn in Nessa at page 681. Third, in some areas of European law it is likely that, in order for the legislation to operate, a person must always be habitually resident somewhere. (See also the comments on Lewis in paragraph 19 above.)
21. However, I do accept some points that go part of the way towards the position advocated by Miss Powick.
- 21.1 It may be that our domestic case law merely expresses what is inherent in the concept as it is understood and applied elsewhere. The differences may be in the way the concept is expressed rather than in its substance.
- 21.2 Even if the concepts are not identical, there are similarities between them. Certainly, the factors that are taken into account will be similar. The factors listed as relevant in Swaddling and in Nessa could be easily transposed, and are even closer if allowance is made for the different factual context in which the decisions were expressed.
- 21.3 It may be that as the body of precedent develops in European law and as Nessa is interpreted and applied in a range of circumstances, the similarities between the concepts will become apparent and they may be found eventually to be the same.
- 21.4 Miss Powick argued that it would be undesirable if habitual residence on arrival in the United Kingdom depended on the claimant's nationality and on whether or not the claimant had moved within the European Union. This factor has already been taken into account by a Commissioner and a Deputy Commissioner who relied on Swaddling as persuasive authority on the domestic concept in CSJSA/4026/1997, paragraph 7 and CJSA/176/1999, paragraph 10. It may be that, with the citation of Swaddling by Lord Slynn, this approach will be followed more widely, despite the points I make in paragraph 20.

A returning former resident only bypasses the appreciable period requirement

22. The only advantage which a returning former resident has over anyone else is that it is not necessary to have resided in the United Kingdom for an appreciable period before the residence becomes habitual. The evidence must show that all the other elements of habitual residence are satisfied.

Factors relevant to an appreciable period

23. Lord Slynn listed some factors that would be relevant in determining the appreciable period of residence required under the normal rule.

“Bringing possessions, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, ‘durable ties’ with the country of residence or intended residence, and many other factors have to be taken into account.”

I assume that Lord Slynn’s reference to ‘durable ties’ alludes to Resolution (72) 1 of the Committee of Ministers of the Council of Europe On Standardisation of the Legal Concepts of “Domicile” and of “Residence”. Rule 9 reads:

“In determining whether a residence is habitual, account is to be taken of the duration and continuity of the residence as well as of other facts of a personal or professional nature which point to durable ties between a person and his residence.”

All the factors that are relevant to the length of the appreciable period (except, of course, the length of actual residence) are relevant in the case of a person returning to the United Kingdom as showing whether or not habitual residence is being resumed.

Intention

24. Habitual residence is defined as involving a settled intention or purpose. However, intention alone is not decisive. In Nessa, Lord Slynn said (page 682):

“It seems to me impossible to accept the argument ... that a person who has never been here before who says on landing, ‘I intend to settle in the United Kingdom’ and who is fully believed is automatically a person who is habitually resident here. Nor is it enough to say, ‘I am going to live at X or with Y.’ He must show residence in fact for a period which shows that the residence has become ‘habitual’ and, as I see it, will or is likely to continue to be habitual.”

25. The words I have emphasised in that passage must be read in their context. They refer to establishing habitual residence. Intention is particularly important at that point. A person could hardly claim to be habitually resident on arriving in the United Kingdom despite intending to stay for only a few weeks. However, once habitual residence is established, it is not lost as soon as the person forms an intention to leave. There are many cases in which a person has been held to lose habitual residence on leaving the United Kingdom, but they contain no suggestion that habitual residence was lost earlier when the person decided to go abroad.

26. Although Lord Slynn’s comments were not made in respect of a person who had previously been habitually resident here, they are relevant in that context. The intention of a person returning to the United Kingdom will always be relevant to show that habitual residence is being resumed and that the claimant is not, for example, residing here for a temporary purpose: see Mr Justice Lane in Cruse v. Chittum [1974] 2 All England Law

Reports 940 at page 943. It will always be relevant to ask the claimant: why have you come back and how long do you intend to stay? Even if the answers to these is believed, they will not necessarily be decisive.

27. There are cases in which intention is irrelevant. So, in *Re MacKenzie* [1940] 4 All England Law Reports 310, a lady came to the United Kingdom on what she intended to be a temporary visit in May 1885, but was admitted to an asylum in September 1885, where she remained until her death in 1939. Mr Justice Morton held that she was ordinarily resident here despite her lack of choice. Cases like this are exceptional and unlikely to arise at the point of return of a former resident.

Why is an appreciable period of residence required?

28. The only element of habitual residence that is bypassed by a returning former resident is the need to be resident in the United Kingdom for an appreciable period. If it is possible to identify the role played by the appreciable period in habitual residence, it may be possible to identify why it is not needed in some cases. This in turn may help to identify the factors that are particularly relevant in establishing that an appreciable period is not required.

29. *Objectivity certainty* One possibility that I suggested at the oral hearing was that residence for an appreciable period gave objective certainty to a claimant's evidence of intention. It would overcome any doubts about the genuineness of a claimant's stated intentions. It would be in line with the general approach taken by the law in establishing a person's intentions by inference from their actions. However, this is not the reason why the law generally requires residence for an appreciable period. At least, it is not the sole reason. As Lord Slynn made clear (at page 682, quoted in paragraph 24), even if a person's stated intentions are believed, that is not sufficient to establish habitual residence.

30. *Informed decision* A different, but similar, suggestion was made by Miss Powick. She suggested that residence for an appreciable period would show that a person's intentions were based on knowledge of what it was like to live in the United Kingdom. Unlike my objective certainty suggestion, this concentrates not on the genuineness of the claimant's statements of intention, but on their reliability as predictions of future residence. Although this suggestion is not covered by the terms of Lord Slynn's comments at page 682, it is within their spirit.

31. Neither of these suggestions fully captures the role played by residence for an appreciable period in establishing habitual residence. Residence for an appreciable period is necessary, because it is inherent in the concept of habitual residence. It is what converts residence into habitual residence. It is also closely connected to the need for a settled intention (or purpose), as it both occurs because of that intention and shows that that intention is present. The elements of habitual residence are not entirely separate from each other. They are interrelated and interact. They cannot be understood without reference to the each other.

32. Given this intimate connection between the elements of habitual residence, it should not be surprising that each element may perform more than one function. Although the need for residence for an appreciable period cannot be wholly explained by my objective certainty function or by Miss Powick's informed decision function, residence for an appreciable period can, and does, also fulfil those functions. The objective certainty function certainly applies in

the law of domicile, in which intention is relevant: see, for example, the comments of Sir Jocelyn Simon in Qureshi v. Qureshi [1971] 1 All England Law Reports 325 at pages 338 and 339. The informed decision function is not stated in the domicile case law or in the habitual residence case law, but it encapsulates a consideration that obviously must be relevant in deciding whether someone has settled in a country. So, it is relevant to consider each of these functions in the case of a returning former resident.

32.1 It is relevant to consider whether there is doubt about the genuineness of a claimant's statements of intention on returning to the United Kingdom. If there is doubt, this may show that residence for an appreciable period is appropriate to demonstrate the genuineness of the stated intention. If there is no doubt, this may be a factor that points to habitual residence being established on arrival.

32.2 It is relevant to consider whether the claimant is in a position to make an informed decision about residence in the United Kingdom. A claimant who has been abroad for a long time may find the changes greater than expected and the difficulties of adjusting too great. This may show that residence for an appreciable period is appropriate to test the claimant's resolve. This is unlikely to be the case for a claimant who has only been absent for a short period, but the changes in the way of life in a country can alter significantly over a short time.

33. *Character of residence* Both these considerations are linked to the key consideration, which is the character of the residence: see Cruse v. Chittum at pages 942 and 943. A claimant's former habitual residence in the United Kingdom may in appropriate circumstances colour the character of the residence immediately on return. The circumstances of the case must make it appropriate to link the earlier habitual residence with the resumed residence so that an appreciable period of residence is not necessary before habitual residence is resumed.

34. *A three stage inquiry* In a typical case, the inquiry into the facts will involve three separate but related stages: (i) the circumstances in which the claimant's earlier habitual residence was lost; (ii) the links between the claimant and the United Kingdom while abroad; and (iii) the circumstances of the claimant's return to the United Kingdom.

35. If the claimant's earlier habitual residence was lost on leaving the United Kingdom, the fact that the claimant's departure was temporary (albeit perhaps long-term) or conditional may be a point in favour of the claimant resuming habitual residence immediately on return. If the claimant left the United Kingdom with no intention of returning, that may be a point against resuming habitual residence on return. If the earlier habitual residence was lost not when the claimant left the United Kingdom but only as a result of events that occurred later, this may be a point in favour of the claimant resuming habitual residence immediately on return, especially if the loss of the earlier habitual residence was a result of circumstances outside the claimant's control.

36. The ties and contacts retained or established by the claimant while abroad must be considered. This includes contact with family and friends, property retained, and the length and purpose of visits. These show the extent to which the claimant has retained links with the United Kingdom which are sufficient to support a link between the earlier and resumed residence.

37. The circumstances of the claimant's return must show that the claimant is resettling in the United Kingdom for the time being. The significance of the circumstances of the claimant's return must be assessed in the context of the length of the claimant's absence from the United Kingdom, the changes that have occurred here during that time and the links that have been retained while abroad. The circumstances will include steps taken by the claimant preparatory to returning.

38. The circumstances of a claimant's return include the possibility of there being habitual residence elsewhere. The most likely possibility is that habitual residence may have been retained in the country from which the claimant returned to the United Kingdom, but in particular circumstances there may be other possibilities. Looking at the case from this perspective will ensure that the decision is based on the whole factual picture and not on a partial presentation of those factors which show a link with the United Kingdom. This does not mean that the test is a comparative one. It only means that it is wrong to take too narrow a perspective when considering whether the claimant has established habitual residence immediately on return to the United Kingdom.

How do these principles apply to the cases before me?

39. I apply these principles to the cases before me in this way.

40. CIS/1304/1997 In this case the claimant's ties for the whole of her life were in this country, although she had family abroad. She has British nationality. She went abroad for a short-term, temporary purpose. That purpose became extended by her marriage and pregnancy, but were further prolonged by her illness. Her absence from the United Kingdom was relatively short and there was no evidence that it was in doubt that she would return. On return, she brought her daughter with her. She left her husband behind, but their separation was intended only to last for the remainder of the year. No doubt about her intention to remain in the United Kingdom for the foreseeable future arose on the evidence. The nature of life in this country had changed little while she was away. In this combination of circumstances, residence for an appreciable period is not necessary in order to establish habitual residence.

41. CJSA/5394/1998 In this case, the claimant's ties during his life (as far as the evidence shows) were with this country. He has British nationality. He went abroad for a particular purpose. When his initial contract came to an end, he tried to find work in this country and took a further contract abroad when this was not successful. He retained a property in this country along with his household possessions. He needed income to support his family, who came with him when he returned. He was qualified for work here. No doubt about his intention to remain in the United Kingdom for the time being arose on the evidence and, although he had been in the far East for some years, the claimant had visited the United Kingdom twice a year and so remained aware of conditions in this country. In this combination of circumstances, residence for an appreciable period is not necessary in order to establish habitual residence.

Summary

42. As I have decided that the tribunals' decisions are erroneous in law, I must set them aside. I, therefore, have power either to refer the cases to Appeal Tribunals for determination

or to give decisions myself, with or without further findings of fact. It is not necessary for me to make further findings of fact as I can give the decisions which the tribunals should have given on their findings of fact. Those decisions are set out in paragraphs 1.3 and 2.3.

Signed: **Edward Jacobs**
 Commissioner

Date: **4th January 2000**