

CAS

FVH/SH/1

Commissioner's File: CIS/5136/1995

Non-remit

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

RECEIVED
17 JUL 1997
C. A. S.

Name:

Social Security Appeal Tribunal:

Case No:

1. This is an appeal by the claimant, supported by the adjudicating officer, against the majority decision by the Whittington House Euston social security appeal tribunal made on 21 December 1994 that, as she was not habitually resident in the United Kingdom, her "applicable amount" was nil and she was not entitled to income support.

2. By section 124 of the Social Security Contributions and Benefits Act 1992 a person present in Great Britain, fulfilling the other statutory conditions, is entitled to an amount of income support equal to the amount by which his or her "applicable amount" exceeds his or her income. Regulation 21(1) of the Income Support (General) Regulations 1987 provides that the "applicable amount" for a person to whom the regulation applies shall be as set out in Schedule 7 to the Regulations. The schedule specifies that for persons from abroad the applicable amount is nil. Regulation 21(3) defines persons from abroad as those not habitually resident in the United Kingdom

3. The claimant was a United Kingdom citizen. Her parents returned to Nigeria when she was about three years of age. She received her schooling in Nigeria and did her GCEs there. At the age of 19 she came to Britain to further her studies, completing a B Tec MD in two years. She obtained the tenancy of a council flat which she had had for about 18 months by the date of the hearing before the tribunal. She had been offered a university place. She said she wanted to stay in Britain and obtain work after completing her studies. I accept the submission made on behalf of the claimant that there is no evidence for the majority finding of the tribunal that she did

not have any realistic prospects of finding work and that her sole intention was to further her education, returning to Nigeria when that had been completed.

4. The tribunal did not have the benefit of a number of Commissioners' decisions which have been published since the date of the tribunal to assist them with the interpretation of the phrase "habitual residence". The test is a factual one. No exhaustive list of criteria can be drawn up. Presence in the United Kingdom with a settled intention to remain is not, by itself, sufficient to establish habitual residence. There must also have been an appreciable period of actual residence, the necessary length of which will depend on the circumstances. The strength of the family ties both here and abroad may be a relevant consideration (CIS/1067/1995 starred 82/95). In this case the claimant's dependence on benefit, while not of itself precluding proof of a habitual residence (a suggestion which would produce an absurd circularity), may militate against a finding of habitual residence where actual residence appears purposeless and has been brief, (CIS/2326/1995 starred 38/96).

5. In the present case, the claimant had been in Great Britain for an appreciable period of time and, in my view, had a settled purpose of remaining. The dependence on benefit is counter balanced by evidence of achieved self-improvements, an offer of an opportunity to higher education and a stated desire to obtain qualifications in work in the UK. The claimant was at an age when it is normal to leave home and establish an independent existence. She is a British national and only in Britain does she have a right to live. I agree with the adjudicating officer, that, on the evidence she was habitually resident in the United Kingdom and, in particular, that she did not cease to be habitually resident in the United Kingdom while on a three-week holiday immediately before her claim.

6. I therefore give the decision the tribunal should have given which is that, from 21 August 1994, the claimant was habitually resident in the United Kingdom.

(Signed) F V HERWARD
Deputy Commissioner

(Date) 7 July 1997