



IAC-FH-NL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/11981/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> June 2015**

**Decision & Reasons Promulgated  
On 22<sup>nd</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES  
UPPER TRIBUNAL JUDGE SAINI**

**Between**

**NIITA EMVULA EINS  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: No representation

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Niita Emvula Eins against the decision of Judge Fletcher-Hill from a decision made at Hatton Cross on the 28<sup>th</sup> of October 2014 in a decision promulgated on the 8<sup>th</sup> of December 2014. The appellant who entered the UK in 2005 with a residence card is married, or was married to a German national who throughout the period appears to have exercised treaty rights under the EEA Regulations. Following their divorce on the 13<sup>th</sup> of December 2012 the appellant

applied for a permanent residence card reflecting a right of permanent residence in the UK. The Regulation that deals with that is Regulation 15(1)(b) which states that a person qualifies for permanent residence if they are a family member of an EEA national who is not themselves an EEA national but who has resided in the UK with the EEA national in accordance with these Regulations for a continuous period of five years.

2. Having entered as the spouse of Mr Eins the Appellant was granted a residence card which was valid from the 8<sup>th</sup> of October 2005 to the 4<sup>th</sup> of October 2010. In August of 2010 a renewed application was made and a further residence card was granted valid until December 2015. In the interim, as I have noted, they divorced in December 2012.
3. The case has not been helped by the absence of the Home Office file which appears to have gone missing but the determination of Judge Fletcher-Hill makes a suggestion that no further documentation was supplied and available to him. We have before us the Notice and Grounds of Appeal which appear to have been submitted with a large amount of documentation including copies of passports and other supporting documentation such as a business rate bill, phone line and the like. It is clear to us that information that perhaps should have come to the attention of Judge Fletcher-Hill did not.
4. The issue is straightforward. The issue of a residence card by the Secretary of State can be taken by us to be an acceptance by the Secretary of State of the facts that underlie it. In this case that the applicant or the appellant had been in the UK, residing with her German husband and that in the circumstances she was entitled to the grant of a residence card and that means that he must have been exercising treaty rights at all relevant times. Having entered in 2005 and divorced in 2012 that would give her a continuous period of seven years' residence in the UK with a German national exercising treaty rights. That length of residence in those circumstances clearly meets the requirements of Regulation 15(1)(b) and in those circumstances the appellant's appeal ought to have been allowed.

#### NOTICE OF DECISION

5. On the basis of the evidence before us we set aside the decision of Judge Fletcher-Hill. We re-make the decision and allow the appellant's appeal.
6. No anonymity direction is made.

Signed

Date 18<sup>th</sup> June 2015

Deputy Upper Tribunal Judge Parkes

**To The Respondent  
Fee Award**

It appears that a fee was paid in the sum of £140. In allowing the appeal we make a fee order in the sum of £140 which is to be the payment of that sum to the appellant by the Secretary of State.

Signed

Date 18<sup>th</sup> June 2015

Deputy Upper Tribunal Judge Parkes