



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

Appeal Number: IA/50068/2013

THE IMMIGRATION ACTS

Heard at Field House, London

**Decision & Reasons
Promulgated**

On 5th June 2015

On 24th June 2015

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR MUHAMMAD JAHAN ZAIB
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Jones, of Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against the decision of the First-tier Tribunal (Judge Stokes) in which it dismissed the Appellant's appeal against the Secretary of State's decision to refuse him a Residence Card as a Qualified Person under the EEA Regulations 2006. The Appellant claimed he qualified for a Residence Card because he was entitled to permanent residence in the UK under Regulation 15(1) of 2006 Regulations.
2. The Appellant is a citizen of Pakistan born 26th December 1980. He arrived in the UK in possession of a Student Visa. His Sponsor is a national of

Slovakia who first arrived in the United Kingdom in September 2004 and has remained here since; either as an employee, student or job seeker.

3. The Appellant and the Sponsor met each other sometime around October 2014 and formed a relationship. In March 2007 their son was born and in April 2007 they married. The Appellant was then issued with a Residence Card on 1st April 2008.
4. On 1st March 2013 he applied for permanent residence. The Respondent refused that application on 14th November 2013 on the grounds that the Appellant had not provided evidence that he had resided in the UK in accordance with the EEA Regulations, for a continuous period of five years. It is that refusal which came before the FtT on appeal.

Hearing before the FtT

5. The FtT dismissed the appeal on the following basis. The Judge accepted that the Sponsor had by September 2009, acquired a right to permanent residence herself having been a qualified person for five years prior to that point [23].
6. The FtT then went on to say that the Appellant had not acquired permanent residence because there was insufficient evidence that the Sponsor had been a qualified person for five years after their marriage. The Judge therefore dismissed the appeal.
7. The grant of permission succinctly sets out the discrete issue before me and the relevant parts are reproduced here.

“The Appellant seeks permission to appeal, in time, against a decision of First-tier Tribunal Judge Stokes, promulgated on the 7th January 2015, to dismiss the appeal against refusal of his application of a Residence card in recognition of his claimed permanent right of residence in the United Kingdom.

It is arguable that once the appellant’s wife had acquired a permanent right of residence in the UK, the Tribunal should have treated the appellant as thereafter residing with her “in accordance with” the 2006 Regulations regardless of whether she continued to be a ‘qualified person’ for the purposes of Regulation 6 [noting, in particular, the contrast in wording between Regulations 14 and 15 respectively]. The contention that the reasoning in JM(Liberia) [2006] EWCA Civ 1402 is equally applicable to a refusal to grant a Residence Card as it is to a refusal to grant leave to remain in the UK is less persuasive but is nevertheless arguable. Permission to appeal is accordingly granted in respect of both grounds contained within this application.”

The UT Hearing

8. Before me Miss Jones on behalf of the Appellant submitted that there was only one issue; had the FtT erred in its finding that the Appellant had not acquired the right of permanent residence, because of its

misinterpretation of when the five year qualifying period as a family member ran? She submitted that the grounds granting permission had properly set out the argument and on the facts found, the FtT, could only have come to the conclusion that the Appellant's appeal should be allowed under Regulation 15. She said that she accepted that grounds seeking permission had referred to Article 8, but she was not pursuing that matter.

9. Mr Nath essentially relied upon his rule 24 response which he accepted appeared on the face of it appeared to say the Judge had directed himself correctly but then said the decision was fatally flawed. Whilst not conceding the issue he had nothing further to add.

Consideration of Error of Law

10. I accept Miss Jones' submission. I am satisfied that the FtT erred in its conclusion, because it is clear the Judge has focussed solely on Regulation 6(2) and overlooked Regulations 14 and 15. The latter Regulations are the relevant ones in this appeal. That omission renders the determination fatally flawed and the decision must be set aside.

Remaking the Decision

11. I find I am in a position to remake the decision since there is no great challenge to the facts found by the FtT. I accept that the Rule 24 response does appear to make some reference to the FtT's chronology and findings on whether comprehensive sickness policy was available. However Mr Nath did not seek to develop those points further.

12. Therefore, the relevant undisputed facts in this appeal are;

- (1) The Appellant and his Sponsor married on 2nd April 2007.
- (2) The Sponsor acquired permanent residence on 11th September 2009 having been a qualified person for five years prior to that date. She has not lost her permanent residency and has remained in the UK since in accordance with the Regulations
- (3) The Appellant has resided continuously with his Sponsor - they have a 7 year old child. Regulation 15(1) says:

"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."

Regulation 14 says:

“(1) A qualified person is entitled to reside in the United Kingdom for so long as he remains a qualified person.

(2) A family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a permanent right of residence under Regulation 15 is entitled to reside in the United Kingdom for so long as he remains the family member of the qualified person or EEA national.

13. The FtT found at [22] and [23] that the Sponsor was a qualified person from September 2004 until November 2010. There is a finding at [23] that in the light of this the Sponsor acquired the right of permanent residence in September 2009. She has not lost that right since she has remained in the UK since that time in accordance with the EEA Regulations. Those findings stand unchallenged.
14. It follows therefore, from the date of his marriage on 2nd April 2007 until September 2009 the Appellant had a right of residence as the family member of a qualified person and from September 2009 onward a right of residence as the family member of a person with permanent residence. Therefore he has resided in accordance with the regulations for a continuous five year period and so by 2nd April 2012 had acquired the right of permanent residence. Accordingly this appeal is allowed.

Decision

15. The decision of the FtT is set aside for legal error. I remake the decision. The Appellant’s appeal is allowed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

Fee Award

As I have allowed the appeal, I make a fee award of any fee which has been paid.

Signature

Dated