



**Upper Tribunal
Immigration and Asylum Chamber**

Appeal Number: IA/45447/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 18 March 2016

On 4 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

BETWEEN

**MRS OMODAMWEN JUDITH ABUWA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw, counsel instructed by Nandy & Co

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 1 September 2015, of First-tier Tribunal Judge D Ross (hereinafter referred to as the FTTJ). Permission to appeal was granted by FTTJ Brunnen 1 February 2016.

Background

2. On 19 December 2004, the appellant entered the United Kingdom on an

EEA Family Permit, which was valid until 19 April 2006. On 3 September 2009, the appellant was issued with a Residence Card as the family member of her husband, a German national. On 15 August 2014 the appellant, with the assistance of her current solicitors, sought a Permanent Residence Card on the basis she was separated from her EEA family member who continued to work in the United Kingdom and to financially support her. She also claimed to be a victim of domestic violence.

3. The respondent interpreted the application as including a claim to qualify for retained rights of residence. That claim was refused on the basis that the marriage had not been terminated. The claim of domestic violence was rejected owing to a lack of supporting evidence. The application for permanent residence as a family member was refused owing to insufficient evidence that the EEA sponsor was exercising Treaty rights either prior to 15 October 2012 or after 15 January 2013. Consequently, it was not accepted that the EEA sponsor had been exercising Treaty rights in the United Kingdom for a continuous 5-year period.
4. The appellant appealed. The grounds of appeal relied on the case of Diatta v Land Berlin C.267/83. Thereafter the arguments were convoluted and did not identify which Regulation(s) it is considered the appellant met. Reference was also made to Article 8 ECHR.
5. At the hearing before the FTTJ, evidence was presented showing that the EEA sponsor was working and paying tax in the United Kingdom from 2006 until 2014. However, the appeal was dismissed on the basis that the appellant had not cohabited with her husband for a period of five years.
6. The grounds of application argue that the FTTJ erred in law in concluding that there was a requirement for the appellant to live in the same household as her EEA national sponsor. Reference was made to PM (EEA - spouse- "residing with") Turkey [2011] UKUT 89 (IAC).
7. FTTJ Brunnen granted permission on the basis that the above-mentioned grounds were arguable.

The hearing

8. At the hearing before me, Mr Bramble indicated that the Secretary of State no longer opposed the appeal. He invited me to set aside the decision and remake, taking into account the FTTJ's findings of fact, by allowing the appeal under the Regulations. Unsurprisingly, Ms Shaw was in agreement with this submission.

Error of law

9. At the end of the hearing, I confirmed that the FTTJ materially erred in finding that the Regulations were not met and that I would remake the

appeal by allowing it. My reasons are as follows.

10. The FTTJ accepted that the appellant remained married to her German husband and that he was exercising Treaty rights from 2007 until 2014. He found that “in order to succeed (the appellant) would have to show that she had lived with her husband in the UK until at least 29 January 2012.” The appellant left her husband in December 2011 and the FTTJ concluded that she had not been residing with her EEA national husband for five continuous years and thus was not entitled to a permanent residence card. In this, the FTTJ was plainly wrong. As PM clearly states in the headnote;

‘The “residing with” requirement relates to presence in the UK; it does not require living in the common family home.’

11. I accordingly, set aside the FTTJ’s conclusion on the issue in question and while retaining all findings of fact, remake the appeal by allowing it under of Regulation 15(1)(b).

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal Judge is set aside.

I remake the decision by allowing the appeal under the Regulations.

No application for anonymity was made and I saw no reason to make such a direction.

Signed:

Date: 19 March 2016

Deputy Upper Tribunal Judge Kamara