



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/00836/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 13<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 24<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

KIKELOMO QUEEN AKINNUOYE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J René (instructed by Dorcas Funmi & Co Solicitors)  
For the Respondent: Miss J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant with permission. It is an appeal against a Decision of Judge Rayner in the First-tier Tribunal promulgated on 2<sup>nd</sup> March 2018 after a hearing on 10<sup>th</sup> January 2018 at Taylor House.
2. The Appellant is a citizen of Nigeria and she had made an application for a permanent residence card under the EEA Regulations. She did so because on 15<sup>th</sup> September 2010 she had been issued with an EEA residence card as an extended family member of her brother valid until 15<sup>th</sup> September 2015. She made her application for a permanent residence card shortly before the expiry of that residence card. Although she had originally claimed as an extended family member pursuant to the EEA Regulations, after she had been issued with a residence card she was to be treated as a family member and thus would have been entitled to a permanent residence card if she met the criteria.
3. The Secretary of State refused her application for two reasons. Firstly, the Secretary of State was not satisfied that she had been living in accordance with the Regulations,

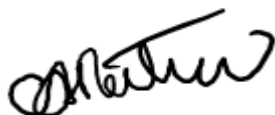
namely with her brother for five continuous years. Secondly, the Secretary of State was not satisfied that the brother had been exercising Treaty rights throughout that five-year period. The Judge heard evidence from both the Appellant and her brother and there was a considerable amount of documentary evidence. After hearing the evidence and looking at the documents the Judge found in the Appellant's favour in relation to her having lived with her brother for five years. That was notwithstanding the fact that she had taken a lease on a property in her own name and been paying rent before the five-year period was up.

4. The Judge then went on to consider the second issue, whether the brother had been exercising Treaty rights. The brother had been employed with an accountancy firm and he had produced P60s. The difficulty with the P60s was that for one year his total income was only £630 and in evidence, that only came out on the day of the hearing, it was explained that there was an eleven-month gap when the brother had not been working. That, he said, was because he had been trying to resolve difficulties with his two sons, who had got into difficulties committing offences. The Judge was prepared to accept that the reason he did not work for those eleven months was so that he could sort his children out and indeed he travelled backwards and forwards to Nigeria during that time. However, the Judge noted that although the brother said that he had been given an eleven-month unpaid period of leave by his employers, there was no evidence whatsoever about that. Indeed, the period of unpaid leave appears to have been, according to his evidence, completely open ended. The Judge was not satisfied in the absence of any evidence whatsoever from the employers that he had indeed been on a period of unpaid leave with their agreement/a sabbatical. On that basis the Judge found that he had not been exercising Treaty rights for a continuous five year period.
5. The Appellant's representatives in the grounds argue that the Judge was wrong to say that a period of unpaid leave for the same employer would not mean that he continued to qualify as a worker. Had the evidence been satisfactory before the Judge that that indeed was the case, then I would have been inclined to agree that he would have continued to qualify as a worker. However, there was no evidence from the employer that that was indeed the case. All the evidence was that there had been a period of eleven months when he was not working. I cannot find an error in the Judge's reasoning in that regard. He did find the Sponsor's evidence generally credible and he accepted the reason why he was not working. This case had taken two years to come before the court from the date of the decision. The Appellant and Sponsor knew what the difficulties were; they knew the reason for the refusal; they knew there was a gap in his working and had more than ample time to provide the appropriate evidence. They did not and therefore should not be surprised that the appeal was dismissed. For those reasons the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 16<sup>th</sup> August 2018



Upper Tribunal Judge Martin