



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

Appeal Numbers: EA/01860/2017
EA/01858/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September 2008**

**Decision & Reasons Promulgated
On 02nd November 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MS CARMEN CANTO PIMENTEL
MR MORUFU ADEKUNDE IGBEDE
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O Olujinmi, OA Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Igbede is a citizen of Nigeria. His date of birth is 15 January 1960. He is married to the Appellant Ms Pimentel. Ms Pimentel is a citizen of the Netherlands. Her date of birth is 13th January 1954.
2. The Appellants applied for permanent residence under the Immigration (European Economic Area Regulations 2016 (the "2016 Regulations"). Their applications were refused by the Secretary of State on 7th February 2017.

3. The Appellants appealed against that decision. Their appeal was dismissed by Judge of the First-tier Tribunal Samimi in a decision which was promulgated on 20 December 2017 following a hearing at Hatton Cross on 13 November 2017.
4. The appeal was dismissed because the judge did not accept that the evidence established that Ms Pimentel had been exercising Treaty Rights throughout the material period.
5. The Appellants were granted permission to appeal by First-tier Tribunal Judge I D Boyes on 6th February 2018. Thus, the matter came before me to determine whether the judge erred.
6. At the start of the hearing the Appellants' representative referred to evidence in the substantial Appellants' bundle consisting of 428 pages which was before the First-tier Tribunal. The Appellants asked for the appeal to be determined on the papers. I put the matter back so that the Appellants' representative could show Ms Everett the specific documents in the bundle which were before the First-tier Tribunal on which the Appellants sought to rely and which it is asserted she did not take into account.
7. The hearing resumed. Ms Everett conceded on behalf of the Secretary of State that the evidence that was in the Appellants' bundle established that they met the requirements of the Regulations, namely, the Appellant Ms Pimentel was exercising Treaty rights throughout a continuous five-year period. She conceded that the judge materially erred because she did not take properly consider this. Had she done so she would have allowed the appeal.
8. It was accepted that the Appellants' bundle was before the judge (or at least it should have been because it had been sent to the FTT by the time that the matter was determined. The judge in this case was not assisted by the presentation of the Appellants' appeal. However, I conclude that there has been material error of law insofar as there was evidence which established that the Appellants met the requirements of the 2016 Regulations. There was evidence that Ms Pimentel had been exercising Treaty Rights for a continuous period of five years. There was no cross challenge by the Secretary of State relating to the judge's findings about the validity of the marriage and the relationship between the Appellants. There is no need to interfere with those findings.
9. I set aside the decision of the First-tier Tribunal to dismiss the Appellants' appeal. I re-make the appeal. I allow the appeal under the 2016 Regulations.
10. The Appellants' appeal is allowed under the 2016 Regulations.

Signed Joanna McWilliam

Date 24 October 2018

Upper Tribunal Judge McWilliam