



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

Appeal Number: IA/19043/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2018**

**Decision & Reasons
Promulgated
On 22 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**BABA AYE EMMANUEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Anifowoshe of Counsel instructed by Roli Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes back before me to remake the decision in the appeal further to the error of law hearing held on 14 November 2017. On that occasion I found that there was an error of law in the decision of First-tier Tribunal Judge White promulgated on 27 January 2016 such that the decision in the appeal required to be remade.
2. One issue in particular had detained the Tribunal and that was in respect of the applicability of a policy in respect of bereaved partners. Since the last hearing the Appellant, who is now in a marital relationship with an EEA national, has been granted an EEA residence card. The card was issued to

him on 11 December 2017. This circumstance, however, does not dispose of the issues in the appeal which are based on a human rights claim and human rights grounds.

3. I am grateful for the helpful approach taken by both representatives before me this morning which allows me to dispose of this matter in relatively brief terms.
4. On the previous occasion I made reference to a policy in respect of bereaved partners that had been relied upon by the Appellant in judicial review proceedings: see paragraph 9 of the 'error of law' decision. However, notwithstanding that the contents of the policy had been set out in the judicial review papers, no relevant policy document had been produced by either party and so it was not immediately apparent what was the source of the policy as set out in the judicial review pleadings. Mr Bramble has now produced a copy of the relevant policy document. He now acknowledges on behalf of the Respondent that the terms of the policy appropriately applied appear to benefit the Appellant.
5. Ms Anifowoshe on behalf of the Appellant essentially submits that in those circumstances any proportionality issue should have been resolved in the Appellant's favour - and indeed should now be so resolved. Mr Bramble does not resist that submission.
6. In the circumstances I conclude that the decision of the Respondent did not accord adequate respect for the Appellant's private life established in the United Kingdom given that he had been in the United Kingdom for a number of years and indeed, most recently, with leave pursuant to his successful appeal before Immigration Judge Tootell. The Appellant has clearly established sufficient private life to allow him to clear the threshold of the first two **Razgar** questions; there is no particular issue between the parties in respect of the third and fourth **Razgar** questions; and, as I have alluded, it appears to be common ground that the proportionality argument raised under the fifth **Razgar** question should be resolved in the Appellant's favour in light of the policy applicable to his circumstances. It is unnecessary to descend to an analysis of the public interest considerations: these are essentially subsumed by the Respondent's policy document, and in any event the Respondent does not suggest that they are such as to weigh against the Appellant. For these reasons the appeal is now allowed on Article 8 grounds.

Notice of Decision

7. The appeal is allowed.
8. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **20 March 2018**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT
FEE AWARD

I have allowed the appeal and in all of the circumstances make a whole fee award.

Signed:

Date: **20 March 2018**

Deputy Upper Tribunal Judge I A Lewis
(*qua* a Judge of the First-tier Tribunal)