Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05274/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 February 2019	**On 20 March 2019**

Before

UPPER TRIBUNAL JUDGE REEDS
UPPER TRIBUNAL JUDGE RINTOUL

Between

MR DORAN ANTHONY WARREN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, instructed by Peer & Co, solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Broe promulgated on 29 November 2018 against a decision by the Secretary of State to revoke a permanent residence card which had been issued to him on the basis of his prior marriage to an EEA national who had been exercising Treaty rights here.

2. There is a long and detailed history to this case which is well known to the parties and we do not see the need to set it out here given that after discussion with the parties it is apparent that the issues are relatively narrow.

3. The appellant's case is that he is entitled to permanent residence on the basis that he had been married to an EEA national who had been exercising Treaty rights in the United Kingdom. The Secretary of State concluded that he was not entitled to permanent residence card as checks made after he had been awarded a permanent residence card and whilst he was applying for British citizenship showed that his former wife had not been working in the tax years 2010/2011 and 2011/2012 and on that basis concluded on 21 March 2017 that he was not been entitled to permanent residence and on that basis revoked the card.

4. When the matter came before the judge it does appear that there was significant evidence that the former wife had been employed for periods prior to 2010 and since tax year 2012/2013 when it appears that she returned to employment.

5. The judge was satisfied that the appellant could satisfy the requirements of Regulation 10(5) but what concerned him was whether he ceased to be an EEA Citizen's family member on the termination of the marriage. He was satisfied that the former wife was exercising treaty rights and found that the appellant had retained a right of residence on termination of marriage but at paragraph [30] found that this was of limited significance because the appellant had to show that he has resided in this country in accordance with the Regulations for a five year period., there being no evidence that he would be treated as a qualified person other than as a third country national.

6. The judge stated at [31] the issue in this appeal is whether the appellant was entitled to a permanent residence card in 2016, found that he was not, and that the respondent was entitled to revoke that card.

7. We have been greatly assisted by both representatives in this case which has resulted in the appeal taking considerably less longer than anticipated.

8. We conclude that the judge made two errors. Having properly concluded that Regulation 10(5) was met because of all the requirements set out in the subparagraphs 8(d) and (d)(i) were met, it appears he misunderstood Regulation 10(6). Regulation 10(6) in effect requires a person seeking to demonstrate that he has retained rights of residence that, but for the fact that he was not an EEA national, he would otherwise have been a qualified person. It does not appear to us to be in dispute in any way that the appellant had in fact been self-employed for the entirety of the relevant period and so on that basis were he an EEA national and been a qualified person and on that basis 10(6) is met.

9. The second error relates to the relevant date on which the card was revoked. It does appear to us that certainly at the date of the decision in 2017 that whether or not the ex-wife had not been earning in 2011/2012 was not a relevant issue. That is because counting back five years from the date of decision, the former wife she had certainly been exercising treaty rights as accepted by the judge from a point in May 2012. On that basis, on any view, the appellant had acquired permanent residence through a combination of residence as the family member of an EEA national and as a person who had retained the right of residence. Whether or not he has permanent residence is a matter of law; a residence card can only be confirmatory of that. In the circumstances we are satisfied that as at the date of decision by the Secretary of State and now that the applicant has a right of permanent residence and accordingly for these reasons the judge erred and we set aside his decision.

10. In the light of what we have said we remake the decision by allowing the appeal under the Immigration (European Economic Area) Regulations 2016. We make it clear we are satisfied the appellant had a permanent right of residence certainly as at the date of decision in 2017 and subsequently.

SUMMARY OF DECISION

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.

2. We remake the decision by allowing the appeal under the Immigration (European Economic Area) Regulations 2016

3. No anonymity direction is made.

Signed Date 13 February 2019

Upper Tribunal Judge Rintoul