



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

Appeal Number: IA/03764 2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> January 2014**

**Determination  
Promulgated  
On 23<sup>rd</sup> January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR MAXWELL SELORM GIDGLO**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Not Represented

For the Respondent: Ms E Martin (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant appeals to the Upper Tribunal against a determination of the First-tier Tribunal (Judge Boyes) wherein it dismissed his appeal against the Respondent's decision to revoke his EEA Residence card.
2. The background to this case is that the Appellant was issued with an EEA Residence card on 16th December 2010 valid until 16th December 2015

as the family member of an EEA national (his wife) exercising Treaty Rights in the UK.

3. On 5th October 2012 the Secretary of State issued a decision purporting to revoke that Residence card on the basis that the Appellant had ceased to be the family member of a qualifying EEA national as he and his wife were divorced. His appeal against that decision having been dismissed by the First-tier Tribunal, the Appellant sought permission to appeal to the Upper Tribunal.
4. A Judge of the First-tier Tribunal granted permission to appeal on 7th October 2013 on the basis that it was arguable that notwithstanding that they were no longer married the Appellant and his EEA partner nevertheless continued to live together.
5. The matter came before me on 26th November 2013 to decide whether or not the First-tier Tribunal had made an error of law in its determination and if so whether and to what extent the determination should be set aside. The Appellant's appeal before the First-tier Tribunal was decided on the papers. He was not then represented. Before me in November he was represented by a "direct access" barrister, Ms Gore.
6. On the face of the papers the Appellant's appeal to the Upper Tribunal seemed without merit. However, Ms Gore referred me to the papers and in particular to the fact that the decision appealed against was a decision to revoke a Residence card issued on 3rd August 2009. The letter referred to a Residence card issued in October 2010 and the Appellant's passport showed that the Residence card had in fact been issued in December 2010. On that basis it appeared that the Secretary of State's decision, the decision appealed against, was flawed.
7. At the then Home Office Presenting Officer's request I adjourned the matter so that that he could make enquiries as to the situation.
8. When the matter came back before me in January 2014 Ms Martin indicated that she had the original vignette which clearly showed the Residence card had been issued in December 2010 and on that basis the letter and, more importantly the decision to revoke were incorrect. The decision sought to revoke something which did not exist. Ms Martin indicated the Secretary of State had in fact made a fresh decision but that had not as yet been served upon the Appellant. That fresh decision will carry a right of appeal. So far as the current decision is concerned, it is unlawful as it purports to revoke something which does not exist. Ms Martin agreed that the appropriate way forward was to set aside the First-tier Tribunal's decision on the basis that a Robinson obvious point had been missed, namely that the decision appealed against was both unlawful and ineffective; it did not revoke the Appellant's Residence card. On the basis that the decision appealed against was unlawful the Appellant is entitled to succeed outright. This is not a case where an unlawful decision means that there is an outstanding application before

the Secretary of State because this decision was not the result of an application; rather it was a decision instigated by the Secretary of State herself. The current situation therefore is that until the Secretary of State makes a lawful decision to revoke it, the Appellant has a Residence card.

9. The appeal to the Upper Tribunal is allowed.

Signed

Date 22<sup>nd</sup> January 2014

Upper Tribunal Judge Martin