



IAC-FH-CK-V1

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

Appeal Number: IA/17477/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 August 2015**

**Decision & Reasons Promulgated
On 8 September 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MR JAMAL MATHOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Paraskos, Counsel instructed by Kamberley Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Carroll dismissing his appeal against the respondent's decision of 26 March 2014 refusing to issue a permanent residence card pursuant to the Immigration (European Economic Area) Regulations 2006.
2. On 2 October 2008 when the appellant made an application for a Residence Card, he produced as evidence that he was the spouse of an EEA national, an Islamic marriage certificate which stated that they were married on 30 August 2008 in Sheffield. As the Islamic marriage was not

considered to be a valid marriage, his application was assessed on his durable relationship as stipulated in Regulation 7(3). He was consequently issued with a residence card on 2 August 2010 as the unmarried partner of Tatjana Vorubjova. He was thus an extended family member of Tatjana Vorubjova. He was informed that he would not qualify for permanent residence until five years from the date, that is, 2 August 2015, which was the date the respondent recognised him as the durable partner/family member of Tatjana Vorubjova.

3. On 27 January 2014 the appellant's solicitors applied on his behalf for a permanent residence card as a confirmation of a right to reside in the United Kingdom. The application was considered under Regulation 15(1) (b) which states that a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with the EEA Regulations for a continuous period of five years shall acquire the right to reside in the United Kingdom permanently.
4. The application was refused because he was issued with a residence card on 2 August 2010 as the unmarried partner of an EEA national and therefore would not qualify for permanent residence until five years from that date when he was recognised as the durable partner/family member of the EEA national. It follows from this that the appellant's application made on 27 January 2014 was premature.
5. The judge in dismissing the appeal held as follows:
 - "7. The appellant having chosen not to have an oral hearing, I have not had the benefit of hearing any evidence from the appellant or from his EEA sponsor. The skeleton argument submitted on behalf of the appellant asserts that the appellant meets all the requirements of EC Directive 2004/38 and is entitled to permanent residence, having completed five years of lawful residence in the UK as the family member of an EEA worker. It is claimed that the appellant qualified for permanent residence in 2013.
 8. It is also claimed by the appellant's representatives '... the oral evidence as to the facts will not have much bearing on the case.' This is manifestly untrue and there is no factual evidence of any sort before me. There are no witness statements (or correspondence) from the appellant or from his EEA sponsor and I have not, of course, had the benefit of hearing any oral evidence from either of them. There is, in fact, a complete dearth of evidence as to the appellant's circumstances and I find, accordingly, that he does not satisfy the requirements of Regulation 15(1)(b) read with Regulation 7(3)."
6. The grant of permission by Upper Tribunal Judge Lindsley stated:
 - "3. It is arguable that the First-tier Tribunal may have materially erred in law. The respondent does not appear to contest that the EEA national partner of the appellant has exercised Treaty rights by working for five continuous years, and it is arguable that the respondent accepts the appellant is currently her durable partner. It is therefore arguably implicit in the respondent's acceptance that he was in a durable

relationship in 2010 that the respondent had accepted he had in fact cohabited in that relationship for the previous two years and thus that in 2013 the appellant had completed five years as a durable partner. This argument has not been dealt with by the First-tier Tribunal although it was put in the appellant's skeleton argument which was before them."

7. Mr Paraskos submitted a brief skeleton argument.
8. He relied on Regulation 2 which defines residence card as meaning "*a card issued to a person who is not an EEA national, in accordance with Regulation 17, as proof of the holder's right of residence in the United Kingdom as at the date of issue*".
9. Mr Paraskos argued that the appellant met the requirements of having a durable relationship and was accordingly granted a residence card as a family member of an EEA national in accordance with EEA Regulation 8(5). At that stage the respondent recognised that they had demonstrated to have been in a durable relationship for two years at the date of the application although the two year requirement itself is not part of the Directive 2004/83 nor the EEA Regulations. In any event the date for the recognition that the appellant was in a durable relationship should be from the date of his Islamic marriage on 30 August 2008 as at that point he had been recognised as residing with his EEA national partner/sponsor. Therefore the five year period to achieve permanent residence should have been taken from 30 August 2008 and not 2 August 2010 when the respondent accepted that he was in a durable relationship with his EEA partner and issued him with a residence card.
10. I rely on **Samsam (EEA: revocation and retained rights) Syria [2011] UKUT 00165 (IAC)** where the Upper Tribunal held at **[21]** that one of the functions a residence card performs is that it is evidence that the Secretary of State was satisfied at the time it was issued that the holder had rights of residence under EU law. It follows therefore that when the appellant was granted a residence card on 2 August 2010, the respondent was satisfied at the time that he fulfilled the requirements as the extended family member of an EEA national under Regulation 7(3) which states:

'... a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.'
11. At **[22]** of **Samsam**, the Upper Tribunal stated that the Citizens Directive Article 11 contemplates that a residence card is valid for five years. Indeed the appellant was granted a residence card for a period of 5 years. I find that the appellant is still required to prove that in those five years,

he has been in a continuous relationship with the EEA spouse. It cannot be assumed that because he was granted a residence card for 5 years the respondent had accepted that he satisfied the requirements of Regulation 15(1)(b) at the time he applied for permanent residence.

12. The appellant submitted evidence to the respondent to establish the EEA spouse was employed over a period of 5 years from 2008 to 2013. There was no evidence before the FtTJ that he had continued to reside with her in accordance with the regulations for the 5 year period from 2008 to 2013, which was the period he was relying on. In any event the application he made in January 2014 was premature because it was short of the 5 year period from the date he was granted the residence card.

13. I find that the judge did not err in law in her decision.

Notice of Decision

The judge's decision shall stand.

Signed

Date

Upper Tribunal Judge Eshun