



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/32784/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15<sup>th</sup> July 2015

Decision & Reasons Promulgated  
On 17<sup>th</sup> July 2015

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

NORBERT THIONGO NDUNGU  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Jibowu, Counsel instructed by M.J. Solomon & Partners

For the Respondent: Mr Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Kenya born on 15<sup>th</sup> July 1983. His appeal, against the Secretary of State's decision dated 5<sup>th</sup> August 2014 refusing to issue a permanent residence card under Regulation 15, 8 and 6 of the Immigration (EEA) Regulations 2006, was dismissed by First-tier Tribunal Judge Hanbury in a decision promulgated on 9<sup>th</sup> March 2015.
2. The Judge found that the durable relationship for the purposes of calculating the five years must have commenced in late 2005 or early 2006. He found that there was no

dispute that the Sponsor was exercising Treaty rights from January 2006 to May 2007, but there was substantial dispute over the first period of unemployment from May 2007 to June 2008. The Judge did not accept that the Sponsor was self-employed from June 2008 to November 2009 and therefore it did not count towards the five year period. The Judge concluded that the Appellant was unable to satisfy the Immigration (EEA) Regulations 2006 [the Regulations] for permanent residence in the UK.

3. Permission to appeal was granted by First-tier Tribunal Judge Frankish on 9<sup>th</sup> June 2015 on the grounds that the Judge had failed to appreciate that the EEA Sponsor had achieved a permanent right of residence and he wrongly started the clock running again with the start of cohabitation in late 2005 or early 2006.
4. At the hearing, it was agreed by the parties that the EEA Sponsor had a permanent right of residence. It was conceded at the appeal hearing before the First-tier Tribunal that she had been exercising Treaty rights from 2001 to 2007. Accordingly, the Judge had erred in law in his application of the Regulations.
5. The Appellant married the Sponsor on 6<sup>th</sup> May 2006 and applied for a permanent residence card on 1<sup>st</sup> February 2012. The Appellant is still married to the Sponsor and they have two children.
6. Under Regulation 14 a family member of an EEA national with a permanent right of residence under Regulation 15 is entitled to reside in the UK for as long as he remains the family member of the EEA national.
7. Under Regulation 15 a family member of an EEA national who is not himself an EEA national but who has resided in the UK with the EEA national in accordance with the Regulations for a continuous period of five years shall acquire the right to reside in the UK permanently.
8. Accordingly, I find that the First-tier Tribunal Judge erred in law in his application of the Regulations and in requiring the Sponsor to show that she was still exercising Treaty rights after she had acquired a permanent right of residence. I set aside the decision dated 9<sup>th</sup> March 2015 and remake it.
9. The Appellant satisfies the requirements of Regulation 15(1) of the Regulations and has acquired a permanent right of residence. The Appellant's appeal is allowed under the Immigration (EEA) Regulations 2006.

### **Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed

Date 16<sup>th</sup> July 2015

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid, I have considered making a fee award and have decided to make a fee award of £140.

Signed

Date 16<sup>th</sup> July 2015

Upper Tribunal Judge Frances