



IAC-AH-KEW-V1

**First-tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/48855/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> January 2016**

**Before**

**DESIGNATED JUDGE OF THE FIRST-TIER TRIBUNAL FRENCH**

**Between**

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

Appellant

**and**

**OMAR BOUHEROUR  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Miss A Everett, Senior Home Office Presenting Officer  
For the Respondent: Mr C Emezie of Dylan Conrad Creolle Solicitors

**DECISION AND REASONS**

1. Omar Bouherour (whom I shall refer to as “the Claimant”) had applied to the Secretary of State for the grant to him of a permanent residence card under the Immigration (European Economic Area) Regulations 2006. His application was refused. His appeal against that decision was allowed by First-tier Tribunal Judge Nolan in a decision promulgated on 13<sup>th</sup> July 2015.
2. Judge Nolan found that the Appellant had been in a durable relationship with an Italian national, although that relationship had now ended. The judge noted that the Appellant had been granted a residence permit as

the family member of the EEA national for the period 21<sup>st</sup> October 2009 until 21<sup>st</sup> October 2014 and that before expiry of his residence card issued in that regard he had made the application for the grant of a permanent residence card. The judge found that the Claimant could not succeed under Regulation 10 but did so under Regulation 15(1)(b) as “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 these Regulations for a continuous period of five years.”

3. The Secretary of State sought permission to appeal asserting that the Claimant’s residence was subject to the Secretary of State exercising discretion under Regulation 17(4) and that the Appellant had never made an application and been documented as “an extended family member” and thus could not qualify under Regulation 15(1)(b). Permission was granted.
4. In a response under Upper Tribunal Procedure Rule 24 it was asserted that the Claimant did meet the requirements of Regulation 15(1)(b) as he had indeed been residing as a family member of the EEA national for the required period in accordance with the Regulations.
5. At the commencement of the hearing before me I enquired of Miss Everett whether the Claimant had or had not been granted a residence card as an extended family member, as had been found by Judge Nolan. She accepted that if the Claimant had been granted the residence card on that basis he would be entitled to be treated as a family member (even though not married to the EEA national) under the provisions of Regulation 7(3). At this point Mr Emezie for the Claimant produced copy documents which appeared to show that the Claimant had been granted a residence card on the basis claimed. I put the matter back in the list for enquiries to be made.
6. When the hearing resumed Miss Everett confirmed that the Appellant had indeed been granted the residence card for the period stated by the judge and in those circumstances there were no further submissions she wished to make.
7. On the basis of that evidence, which apparently had not been before the representative of the Secretary of State who had drafted the application for permission to appeal, and on the basis of the other findings made by Judge Nolan I accepted that the Claimant had been issued with a residence card as an extended family member of the EEA national. The judge found that he had resided in the United Kingdom with the EEA national in accordance with the Regulations, as a family member, (having regard to Regulation 7(3)) for a continuous period of five years. He had therefore been entitled to the grant of a permanent residence card and there was no material error of law in the judge’s decision. I accordingly dismissed the appeal by the Secretary of State.

**Notice of Decision**

There was no material error of law in the decision made by the First-tier Tribunal and the appeal to this Tribunal by the Secretary of State is therefore dismissed.

No anonymity order was requested and none is made.

Signed

Date 17 January 2016

Judge French  
Designated Judge of the First-tier Tribunal