



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

Appeal Number: IA/27029/2015

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons Promulgated
Centre**

On 12th April 2017

On 5th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR JEFFERY AIBANGBEE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Kullar (Solicitor)

For the Respondent: Ms H Aboni (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Astle promulgated on 2nd December 2015, following a hearing at Birmingham, Sheldon Court on 30th November 2015. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Liberia, is a male, and was born on 15th January 1988. He appealed against the decision of the Respondent dated 7th July 2015 to refuse to issue him with a permanent residence card under Immigration (EEA) Regulations 2006.

The Judge's Findings

3. The judge observed how the Appellant came to the UK in September 2009 and then met his partner, Hanna Holubova, a Czech national in December of that year and they together moved in. In 2008, she conceived and in January 2009 twins were born to them. On 17th August 2011 the Appellant applied for a residence card. This was refused. He appealed and succeeded in his appeal on 12th July 2012. At the hearing, it was conceded (see paragraph 6 of the judge's decision) that the couple were in a durable relationship. The residence card, however, was not then issued to the Appellant until 7th May 2013. That aside, the judge recorded how the parties had lived together at three rented properties during their time together, all the tenancy agreements were in their joint names, they held a joint bank account, and they planned to marry, but had another baby on 13th June 2015 (see paragraphs 4 to 5).
4. The Respondent, however, does not accept that the evidence demonstrates that the Appellant's partner has been exercising treaty rights in the UK continuously for five years. Secondly, the Appellant's relationship with the Sponsor was not recognised until 7th May 2013, since which date he has been classed as the family member of an EEA national (see paragraph 7).
5. The judge thereafter made two specific findings. First, that it was not disputed that the Appellant's EEA partner had resided in the UK in accordance with the Regulations for a continuous period of five years. The issue in this regard was simply that the Respondent argued that the five year period only runs from the date that the Appellant's residence card was issued, namely, from 7th May 2013. However, as the judge held, the issue of a residence card simply confirmed status. It does not grant status. This is clear from Article 25(1) of Directive 2004/58. It was true that the Respondent only issued the Appellant with their residence card in May 2013 but her representative accepted on 12th July 2012 that this was a durable relationship. Under Regulation 7(3) the Appellant was to be treated as a family member (see paragraphs 10 to 11). Second, the judge held that whilst it is true that member states have a margin of appreciation in their implementation of certain provisions, the state may only exercise discretion to impose requirements which do not deprive the original provision of its effectiveness: see **Islam [2012] EUECJ C-83/11**.

6. The appeal was allowed.

Grounds of Application

7. The grounds of application state that, although it was recognised that the Sponsor was a durable partner and the Appellant was accordingly issued with a residence card on 7th May 2013, the Appellant was now applying for permanent residence, and in order to qualify for this status, he had to meet the requirements of Regulation 15(1)(b). Under Regulation 15, persons who shall acquire the right to reside in the UK permanently will be “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”. It was made clear that for the purposes of the Regulations, an extended family member does not benefit from family member status until he is issued with one of the listed documents. The family member status can then be retained only for so long as he continues to satisfy the conditions. In this case, the residence card was issued on 7th May 2013 and consequently, the earliest that the permanent residence could be acquired was on 7th May 2018.
8. On 9th November 2016, permission to appeal was granted by the Upper Tribunal.

The Hearing

9. At the hearing before me on 12th April 2017, Ms Aboni relied upon the Grounds of Appeal. She submitted that the Appellant was originally an unmarried family member but he was treated as an extended family member. He was now seeking permanent residence and for this purpose he had to show that he had five years residence from the time that his residence card was issued, namely, on 7th May 2013, which meant that the earliest that the permanent residence could be acquired would be 7th May 2018.
10. For her part, Ms Kullar submitted that this was the wrong way of looking at it because Article 25 is quite clear (see page 24 of the Appellant’s bundle) that, “possession of a registration certificate of a residence card or of a permanent residence card, may under no circumstances be made if preconditions for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof”. The judge dealt with this precise issue at paragraphs 10 to 11 of the determination. The judge confirmed that Regulation 15 had been met and specific attention was drawn to Article 25.1 of Directive 2004/58. Prior to the issue of the residence card the Appellant was recognised as a family member and residence cards in themselves only confirm the existing rights and do not grant them. Indeed, a previous determination by IJ Mallinson, on 23rd July 2012 (IA/05618/2012) had allowed the Appellant’s appeal precisely in recognition of this very point.

11. In reply, Ms Aboni submitted that she would have nothing further to add but to say that the five years' residence had to be in accordance with the Rules and this was not the case here.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
13. This is a case where the judge at the outset of her determination made it clear that the Presenting Officer had confirmed that the five year period during which the Appellant's EEA national partner had to demonstrate the exercise of the treaty rights dated back from the date of the hearing, namely, from November 2010. Secondly, that the evidence confirmed that the Sponsor had been exercising treaty rights continuously during that period (see paragraph 2).
14. The dispute before the Tribunal (see paragraph 10) was when the five year period should run from, and the Respondent maintained that it should run from the date when the residence card was issued, namely, from 7th May 2013. However, such a proposition ran counter to Article 25(1) of Directive 2004/58 because the case of **Islam [2012] EUECJ C-83/11** makes it clear that, although member states of the EU have a discretion to impose particular requirements, these requirements must not deprive the original provision of its effectiveness. However, it does not end there.
15. The Appellant had been issued with a residence card in May 2013, but the Respondent had accepted in the Tribunal hearing before IJ Mallinson (IA/05618/2012) on 12th July 2012, that they were in a durable relationship and under Regulation 7(3) the Appellant was to be treated as a family member. The judge was careful not to equate living together with being in a durable relationship (see paragraph 12), and held that it would be appropriate to pinpoint this date of durable relationship some nine months before the twins were born on 4th January 2009. There is, accordingly, no error of law.

Notice of Decision

16. There is no material error of law in the original judge's decision. The determination shall stand.
17. No anonymity order is made.
18. This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd May 2017