



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

Appeal Number: EA/02528/2017

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2018

**Decision & Reasons
Promulgated
On 08 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**SAJID REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr M Bramble, Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 11 September 1978. He is married to a Polish national and they have two children. On 3 September 2016 he applied to the Respondent for a Residence Card as confirmation of his right of permanent residence. On 13 February 2017 the Respondent refused the application on the basis he had not shown that his wife who was his Sponsor had exercised Treaty Rights in the United Kingdom for a continuous period of five years. There was a gap in her work record

between December 2006 and February 2009 and between December 2013 and March 2016. There was evidence that the Appellant himself had been employed for more than five years.

The First-tier Tribunal Proceedings

2. By a decision promulgated on 25 July 2017 Judge of the First-tier Tribunal Ian Howard allowed the appeal of the Appellant against the Respondent's refusal to issue a permanent residence card.
3. On 27 February 2018 Judge of the First-tier Tribunal Hollingworth granted permission to appeal to the Respondent on the ground it was arguable the Judge had erred in the application of the Immigration (EEA) Regulations 2006 as amended to the factual matrix.

The Hearing in the Upper Tribunal

4. The Appellant continued to be unrepresented and attended the hearing. I explained the purpose and procedure to be adopted. He confirmed his wife cared full-time for their two children. In answer to a question from me he said he did not understand the difference between a retained right of residence and a permanent right of residence.
5. The Appellant insisted that in 2009 when he was issued with a Residence Card his wife was not working and was pregnant and that evidence of that pregnancy had been supplied to the Respondent. He could not understand why the position was accepted in 2009 that his wife was not working it should be any different in 2018 in relation to his latest application.
6. There followed a lengthy discussion between the Appellant, Mr Bramble for the Home Office and myself with the purpose of enabling the Appellant to understand the legal principles applicable to his situation and in particular that any Residence Card he might obtain under the Immigration (EEA) Regulations 2006 was entirely dependent on the circumstances of his wife, an EEA national.
7. I am satisfied that at the hearing, the Appellant had an understanding why any application he might make for a Residence Card under the 2006 Regs was entirely dependent upon the circumstances of his wife who is an EEA national. I cannot, of course, comment whether the Appellant would be able to recall and explain the position to any legal adviser. Both Mr Bramble and myself strongly recommended to the Appellant that he needed urgently to take good legal advice on his position and what he might do to ameliorate his situation.
8. Mr Bramble relied on the Respondent's grounds for appeal and the grounds as identified in the grant of permission to appeal by Judge Hollingworth.

9. I find Judge Howard erred in law at paragraph 14 of his decision in which he did not take account of the fact that the Appellant had not shown his wife had been exercising Treaty Rights for the relevant period of time to enable him to claim permanent residence.
10. The decision of the First-tier Tribunal is set aside and I re-make the decision to dismiss the appeal which was doomed to failure from the start for the reasons already given.
11. There was no request for an anonymity direction and had considered the appeal, I find none is warranted.

NOTICE SUMMARY OF DECISION

The decision of the First-tier Tribunal contained a material error of law and is set aside and is remade in the following terms:-

The appeal of the Appellant against refusal of a Permanent Residence Card is dismissed.

The appeal of the Secretary of State for the Home Department is allowed.

No anonymity direction is made.

Signed/Official Crest

Date 02.05. 2018

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal