



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

Appeal no: **EA/03073/2016**

THE IMMIGRATION ACTS

At Field House

**Decision & Reasons
Promulgated**

On 28th November 2018

On 3rd December 2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

AMADU [B]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Harshaka Kannangara* (counsel instructed by Jade Law)

For the respondent: Mr Toby Lindsay

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Chris Nicholls), sitting at Taylor House on 6 July 2017, to dismiss an EEA appeal by a citizen of Sierra Leone, born 1975.

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*

(2) *persons under 18 are referred to by initials, and must not be further identified.*

- 2.** The appellant's history is not in dispute. He arrived here in 2004, and by 2008 had formed a relationship with a Polish citizen, with whom he had a son on 9 November that year. On the basis of that relationship he was given a residence card on 29 November 2010, valid for five years. In November 2013 he parted company with his baby-mother, but on 19 November 2015 applied for a permanent right of residence on the basis of the qualifying period he had spent in this country. On 27 January 2016 that was refused, on the basis that his residence here only qualified from when he got his residence card, so that he had not achieved the necessary five years by the date of his separation. On that basis the judge dismissed the appeal.
- 3.** Permission to appeal was refused in the First-tier Tribunal, but given by a deputy Upper Tribunal judge, on the basis of various reported decisions. Of these, *PM* (EEA - spouse - 'residing with') Turkey [2011] UKUT 89 (IAC) applies expressly to spouses, while the questions referred to the Court of Justice of the European Communities in *Banger* (Unmarried Partner of British National : South Africa) [2017] UKUT 125 (IAC) have nothing to do with the present case. The answers to those referred in *Netherlands v Reed* [1986] EUECJ R-59/85 do no more than require parity in treatment as between 'unmarried partners' of citizens of the country in question, and those of other EEA citizens.
- 4.** Mr Kannangara did not seek to rely on any other European jurisprudence or legislation, so I shall turn now to the [Immigration \(European Economic Area\) Regulations 2016](#). These are the relevant provisions on permanent right of residence:
- '15. - (1) The following persons acquire the right to reside in the United Kingdom permanently—
- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
- (b) a family member of an EEA national who is not 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;
- ...
- (f) a person who—
- (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
- (ii) was, at the end of the period, a family member who has retained the right of residence.'
- 5.** As for who is a family member, the relevant provisions are these:
- '7. - (1) In these Regulations, "family member" means, in relation to a person ("A")—
- (a) A's spouse or civil partner;

(3) A person (“B”) who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card must be treated as a family member of A, provided—


- (a) B continues to satisfy the conditions in regulation 8(2), (3), (4) or (5); and
- (b) the EEA family permit, registration certificate or residence card remains in force.’

6. It follows that, if and so long as a residence card remains in force, an ‘unmarried partner’ who is living in a ‘durable relationship’ with a ‘qualified person’ may acquire a permanent right of residence. On that basis, if the appellant’s qualifying residence began with his ‘durable relationship’ with his baby-mother in or before November 2008, then he would have become entitled to a permanent right of residence by November 2013, when their relationship came to an end; but not if it could only be treated as starting from the issue of his card in November 2010.
7. Mr Kannangara, as already noted, did not refer to any specific European material; but, as he quite rightly said, on general principles the grant of a residence card, like the grant of asylum, but unlike the grant of leave under domestic provisions, recognizes a status that already exists, rather than creating one. He was also right in saying that reg. 7 is silent as to when family member status arises.
8. However the first question in this case is whether there was anything to give the appellant the status of family member, as opposed to extended family member, before the issue of his residence card. At best, from his point of view, he might have qualified for that status from 2008 to 2010, if he had put forward evidence to the judge to show that his baby-mother had been here as a ‘qualified person’, exercising Treaty rights throughout that time. However he made no attempt to do so.
9. On the other hand, there is in my view a great deal to be said in general terms for reading reg. 7 on the basis of what it does say, rather than what might, or might not be read into it. It creates a status of family member in favour of an extended family member with a residence card, who would not otherwise have that status. It is entirely reasonable to treat that status as only arising at that point, at which it may well be assumed that the EEA citizen concerned was here as a ‘qualified person’.
10. There is another consideration in many cases of this kind, though not so much in this one. While spouses are able to point to a definite beginning of their status as family members, by reference to their marriage certificate, an ‘unmarried partnership’ (as opposed to a registered civil partnership) has by definition no recognized beginning before the issue of a card. It is not unreasonable to treat it, on principle, as starting from that point.
11. The reason that consideration is not so strong in this case is that there can be no argument but that the appellant and his baby-mother did have a ‘durable relationship’, from before the birth of their son in 2008 till their

separation in 2013. However the fact that here so much is clear cannot affect the rightness, or otherwise, on principle, of regarding his status as family member as beginning from the issue of his residence card in 2010.

- 12.** There is no dispute but that the appellant was in a 'durable relationship' for five years; but he has not shown that he had the status to qualify him for a permanent right for more than three. Even if I were wrong about the meaning to be given to regs. 7 and 15, he has not shown that his baby-mother was here as a 'qualified person' before 2010.

Appeal dismissed

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper
Tribunal)

**Date : 28th
November 2018**