



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

Appeal Numbers: IA/32193/2015
EA/04109/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20 April 2018**

**Decision & Reasons
Promulgated
On 24 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SADAQAT ALI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L. Tarlow, Senior Home Office Presenting Officer
For the Respondent/Claimant: Ms K. Reid, Counsel instructed by Maxim Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge I M Scott sitting at Taylor House on 7 June 2017) allowing the conjoined appeals of the claimant against (i) the decision made in 2015 to refuse to grant him ILR on the ground of ten years continuous lawful residence and (ii) the decision made in 2016 to refuse to issue him with a permanent residence card as the former spouse of an EEA national who had retained a right of residence following their

divorce and who had thereby acquired a permanent right of residence. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

The Reason for the Grant for Permission to Appeal

2. On 25 January 2018 First-tier Tribunal Judge Farrelly granted the Secretary of State permission to appeal as (i) it was arguable that time spent in the UK further to the Treaty provisions does not come within the definition of lawful residence for the purposes of paragraph 276A(b) and (ii) it was arguable that the Judge was wrong to find, relying on **Singh v Minister for Justice [2016] QB 208**, that the claimant had a retained right of residence because his ex-spouse was exercising treaty rights in the UK at the date of the commencement of divorce proceedings.

The Hearing in the Upper Tribunal

3. At the outset of the hearing before me, Mr Tarlow withdrew the Secretary of State's case in the EA appeal. He conceded that the Judge had not erred in his application of **Singh**; and that his findings that the claimant had a retained right of residence under Article 13(2) of the Citizen's Directive, and he had thereby acquired a right of permanent residence, were sustainable, and he did not seek to disturb them. However, he maintained an error of law challenge in respect of the IA (human rights) appeal.
4. Ms Reid accepted that the Judge had erred in law in allowing the human rights appeal under the Rules. After further discussion, she agreed that, as the claimant had succeeded in his EA appeal, Article 8(1) was not engaged in a human rights appeal outside the Rules.

Discussion

5. As the Secretary of State has withdrawn her case in the EA appeal, it is not necessary for me to address it; and, on reflection, I do not consider that it would be appropriate to do so - precisely because the arguments advanced in the grounds of appeal have not been developed, but have been abandoned.
6. In the human rights appeal, the Judge misdirected himself in treating time spent in the UK under the Community Treaties as counting towards lawful residence for the purposes of the Immigration Rules. So he was wrong to allow the human rights appeal on the ground that the claimant had accrued ten years' continuous lawful residence under the Rules. As the error was material to the outcome of the human rights appeal, I set aside his decision.
7. As the claimant has succeeded in his EA appeal, Article 8(1) is no longer engaged. The refusal of ILR does not interfere with any private or family life which the claimant has established in the UK, because he has the benefit of the decision of the First-tier Tribunal that he has acquired a right

of permanent residence under the Community Treaties. Accordingly, I remake the decision in the human rights appeal in favour of the Secretary of State.

Notice of Decision

The decision of the First-tier Tribunal in the human rights appeal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's human rights appeal is dismissed.

The decision of the First-tier Tribunal in the EA appeal did not contain an error of law, and accordingly the decision stands and the Secretary of State's appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 22 April 2018

Judge Monson
Deputy Upper Tribunal Judge