



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/52106/2013**

Appeal number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On November 28, 2014

On December 2, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR YAHIA ABDENNOUR AIT
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Deller (Home Office Presenting (Officer))
For the Respondent: In person

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born November 11, 1979 is a citizen of Algeria. On April 11, 2008 he was issued with an EEA residence card and on August 29, 2013 he applied for permanent residence. This application was rejected by the respondent on November 28, 2013.

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006 on December 9, 2013. On June 3, 2014 Judge of the First Tier Tribunal Wyman (hereinafter referred to as the "FtTJ") heard his appeal. He allowed the appeal under the 2006 Regulations in a determination promulgated on June 19, 2014.
4. The respondent lodged grounds of appeal on June 21, 2014 and on July 3, 2014 Judge of the First-tier Tribunal McDade granted permission to appeal finding it arguable the FtTJ had erred by failing to give reasons why he was satisfied the appellant had provided satisfactory evidence that the EEA spouse had medical insurance between June 2010 and June 2011 when no evidence had been submitted.
5. The matter originally came before me on August 26, 2014 and I was satisfied the FtTJ had made an error but the materiality of the error was the issue as the appellant argued that medical insurance was not needed because his EEA spouse already had permanent residence. Mr Deller looked at the document issued on May 18, 2006 and said there may be something in what the appellant was saying and he asked that the case be adjourned for further enquiries and evidence to be sent to him by the appellant.
6. I adjourned that hearing with no decision on the error in law on the understanding the respondent would liaise with the appellant over the matter. The matter came back before me on October 20, 2014 and regrettably Mr Deller had been taken ill shortly after the last hearing and had been unable to complete his enquiries as he had only returned to work that day. I adjourned the matter further and issued directions.
7. On November 25, 2014 Mr Deller faxed the Tribunal and indicated he was satisfied with the evidence and more particularly he was satisfied the appellant acquired his right of permanent residence in 2013 as he had been a family member of an EEA national with such a right for over five years. He submitted the appeal had been allowed for the wrong reason but in light of the evidence he accepted this was not material. A request was made to deal with the case in the absence of both parties but the Tribunal directed the case remain listed.

MY FINDINGS ON ERROR IN LAW

8. The FtTJ allowed the appellant's appeal on the basis he had produced a current medical insurance. This document did not demonstrate the EEA national had medical insurance when she was a student. This decision was

wrong and in the absence of anything else I would have set aside the decision and allowed the appeal because the appellant had failed to satisfy the FtTJ his wife was working for the relevant dates.

9. However, the respondent was now satisfied that the appellant's EEA national wife's employment history began in 2000 and she acquired her right of permanent residence at some point before her marriage to the appellant. A document had previously been produced showing an "indefinite residence permit" was issued to the EEA national on May 18, 2006. The respondent further accepted they had been together for five years by 2013 and he was entitled as of right to his permanent right of residence having been given a right of residence on April 11, 2008.
10. I am satisfied that Mr Deller's approach is correct and consequently whilst the FtTJ's reason for granting the appellant was incorrect the decision nevertheless remained correct in light of this important concession and there was no material error in law.
11. The Tribunal thanks Mr Deller for his assistance and approach in this appeal.

DECISION


12. There was no material error of law The original decision is upheld.
13. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

 Mr Deller did not oppose the making of a fee award. I therefore alter the previous fee award decision and I make a fee award.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis