



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

Appeal Number: EA/00770/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> March 2018**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> April 2018**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**MOHAMED CHAKROUN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Aitken instructed by Ozoran Turkan Solicitors  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Row promulgated on 9 May 2017, in which the Appellant's appeal against the Respondent's decision to refuse his application for an EEA Residence Card dated 5 January 2017 was dismissed.
2. The Appellant is a national of Morocco, born on 14 May 1982, who applied to the Respondent on 10 June 2016 for an EEA Residence Card as confirmation of a right to reside in the United Kingdom. The application was on the basis that he and his British citizen sponsor, Zaynab Achghaf,

had resided in and exercised their right to free movement in Spain immediately before returning to the United Kingdom.

3. The Respondent refused the application on 5 January 2017 on the basis that the conditions in Regulations 9 and 17 of the Immigration (European Economic Area) Regulations 2006 had not been met. In particular, consideration was given as to whether the sponsor's residence in Spain was genuine but it was not accepted that it was because the centre of the sponsor's life had not transferred to Spain; there was no significant degree of integration there; and there was no evidence that the Appellant's residence in Spain was lawful. The Respondent considered that the Appellant's and the sponsor's residence in Spain was for the purpose of circumventing the United Kingdom's domestic Immigration Rules or other immigration law.
4. Judge Row dismissed the appeal in a decision promulgated on 9 May 2017 following consideration of the appeal on the papers. No bundle had been provided by the Respondent for the purposes of the appeal and although there were some additional documents submitted from the Appellant it was noted that there was no statement from him and the documents that were available either did not go to the question of residence in Spain or were inconsistent as to dates of travel and residence.

### **The appeal**

5. The Appellant appeals on two grounds. First, that there was a failure by the First-tier Tribunal to obtain the Respondent's bundle, with reliance placed on the Upper Tribunal's decision in Cvetkovs (visa - no file produced - directions) Latvia [2011] UKUT 00212 (IAC). Secondly, that the Respondent's bundle, if it had been made available to the First-tier Tribunal, contained the Appellant's EEA family permit issued in Spain in 2015 and the Respondent's decision (and also therefore the decision of the First-tier Tribunal) was made on the wrong basis. In accordance with the Upper Tribunal decision in Ewulo (effect of family permit - OFM) [2012] UKUT 00238 (IAC), that where a family permit has been issued under the Immigration (European Economic Area) Regulations 2006 and used to enter the United Kingdom, a subsequent application for a Residence Card is to be determined under Regulation 7(3) of the same. If a family permit has not been revoked, the issue is whether there has been a material change of circumstances since arrival such that an applicant no longer qualifies as an extended family member.
6. Permission to appeal was granted by Judge Gleeson on 8 January 2017 on all grounds.

### **Findings and reasons**

7. At the outset of the oral hearing, Mr Duffy conceded on behalf of the Respondent that there was a material error of law in the decision of Judge Row and that the appeal should be allowed and remitted back to the First-

tier Tribunal rehearing. The Appellant agreed with that proposed course of action.

8. I find the Respondent's concession to be appropriately made, and in the circumstances, I give only summary reasons for finding that the decision of the First-tier Tribunal involved the making of a material error of law such that it is necessary to set aside the decision.
9. Paragraph 24 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 includes the requirement for the Respondent to provide the First-tier Tribunal with specified documents in relation to the decision under appeal, which was not complied with by the Respondent in the present case with no documents at all being received from the Respondent. The Appellant wished to rely on the issue of an EEA family permit to him by the Respondent, which was contained within his passport. The Respondent held the Applicant's passport and a copy of this would usually be included in any bundle provided by the Respondent for the purposes of an appeal.
10. Although Judge Row acknowledged there was no bundle of documents from the Respondent no further consideration was given as to whether the case should be adjourned for this to be obtained and when noting that the Appellant had not produced his EEA family permit, failed to recognise that this would be in his passport in the possession of the Respondent.
11. The procedural error by the Respondent and lack of further consideration of this omission or its possible consequences by Judge Row was material in the present case because the existence of an EEA family permit being issued to the Appellant prior to his present application means that his application should have been considered under Regulation 7(3), not Regulation 9 of the Immigration (European Economic Area) Regulations 2006, as set out in Ewulo. The further error of law is therefore that the First-tier Tribunal applied the wrong provision of the Immigration (European Economic Area) Regulations 2006 when determining the appeal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Birmingham hearing centre) to be heard by any Judge except Judge Row.

No anonymity direction is made.

Signed



Date

19<sup>th</sup> April 2018

Upper Tribunal Judge Jackson