



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

Appeal Number: EA/01544/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th February 2018**

**Decision & Reasons Promulgated
On 1 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MS O.B.B.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bokhari (Slough Immigration Aid Unit)

For the Respondent: Ms A Everett (Senior Home Office Presenting Officer)

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made. I deem it appropriate on the basis that elements of the evidence refer to minor children.

DECISION AND REASONS

1. The Appellant, a citizen of Nigeria, born [] 1980, appeals with permission against the decision of a First-tier Tribunal (Judge R Hussain) dismissing her appeal against the Respondent's decision of 21st January 2016 revoking her residence card as the spouse of an EEA national exercising treaty rights.

Background

2. The following factors are relevant to the appeal before me:
- i. The Appellant, a citizen of Nigeria (d.o.b. [] 1980), entered the United Kingdom on a date unknown.
 - ii. On [] 2008 she gave birth to a child B.B.S. B.B.S.'s father is Mr A.O.H.B. who is also a Nigerian citizen.
 - iii. On 14th August 2010 she married Mr N.E. ("the Sponsor"), a French national.
 - iv. On 1st January 2011 the Appellant gave birth to S.A.B. S.A.B.'s birth certificate was subsequently amended to show Mr N.E. as his father.
 - v. On 25th August 2011 she applied for an EEA residence card as the spouse of Mr N.E. This application was rejected on 16th September 2011.
 - vi. On 29th September 2011 she again applied for an EEA residence card. This application was refused on 23rd January 2012 with a right of appeal. The refusal was made on the basis that the Appellant's marriage was deemed to be one of convenience.
 - vii. On 8th June 2012 a third application was made for an EEA residence card and this application was rejected on 19th July 2012.
 - viii. On 11th October 2012 a further application was made for an EEA residence card. This was again refused on the grounds that the marriage was believed to be one of convenience. On 13th May 2013 the Appellant lodged an appeal against that decision.
 - ix. On 19th December 2013 she made an application for a derivative residence card.
 - x. On 21st February 2014 an appeal against the refusal of 11th October 2012 was allowed and an EEA residence card was issued on 24th April 2014.
 - xi. On 7th August 2014 the Appellant's third child S.O.E.B. was born. The father is named as Mr A.O.H.B.
 - xii. On 29th July 2015 the Appellant applied for a residence card on behalf of her daughter S.O.E.B.
 - xiii. On 10th November 2015 the Appellant made an application for permanent residence. This application remains outstanding.
 - xiv. On 21st January 2016 the Respondent made a decision to revoke the Appellant's residence card. The Appellant exercised her right of appeal against the revocation decision.
 - xv. The appeal against revocation was heard by the First-tier Tribunal on 10th May 2017. The appeal was dismissed by a decision promulgated

on 27.6.2017. The Appellant sought and was granted permission to appeal the FtTJ's decision.

FtT Hearing

3. The revocation appeal which forms the basis of the instant appeal came before FtTJ Hussain. There were two strands to the Respondent's decision to revoke.
 - The first strand revolved around the evidence of the birth certificate submitted on behalf of S.O.E.B., the Appellant's third child. S.O.E.B. is not the child of the Appellant's Sponsor Mr N.E. but is the child of Mr A.O.H.B. This resulted in a query being raised once more that the Appellant had entered into a marriage of convenience with Mr N.E. This was on the basis that the Appellant's first child born in 2008 was also declared to be the child of Mr A.O.H.B. The Sponsor's second child is said to be the child of Mr N.E.
 - The second strand causing the Respondent to revoke the residence card was on the basis that she could not be satisfied that the Appellant's Sponsor Mr N.E. was still employed or was otherwise a qualified person within the EEA Regulations.
4. The FtTJ in his decision promulgated on 27th June 2017 decided:
 - The Appellant's marriage with the Sponsor was not one of convenience. It is correct to say at this point that no challenge has been raised by the Respondent either by way of cross appeal or otherwise to that finding and therefore it remains.
 - The documentary evidence produced by the Appellant did not satisfy him that the Appellant's Sponsor was exercising treaty rights.
5. In coming to the above conclusions, the FtTJ declined to make findings on whether the Appellant's Sponsor Mr N.E. had permanent residence in the United Kingdom. If it was the case that he did have permanent residence in the UK then as the spouse of a person with permanent right of residence, the Appellant would be entitled to residence.
6. The Appellant sought and was granted permission to appeal the FtTJ's decision. The relevant parts of the grant of permission read as follows:
 - "2. The Secretary of State revoked the card on the basis that she believed the Appellant to have entered a marriage of convenience. That point was decided in the Appellant's favour by the Judge as it had been in a previous appeal.
 3. The Secretary of State also asserted that the EEA national was not exercising Treaty rights.
 4. The Judge looked at the evidence adduced and found he was not satisfied that the EEA national was exercising Treaty rights and

dismissed the appeal. He declined to decide whether the EEA national had permanent residence as the issue before him was the revocation. In so doing he arguably erred as, if the EEA national had permanent residence there was no requirement that he be a Qualified person and as the spouse of a person with a permanent right of residence the Appellant would be entitled to reside and the Secretary of State not entitled to revoke her residence card.”

Thus the matter comes before me to decide initially whether the decision of the First-tier Tribunal discloses an error of law such that the decision must be set aside and remade.

Error of Law Hearing

7. Ms Bokhari appeared for the Appellant and Ms Everett for the Respondent. Ms Bokhari relied on the grounds seeking permission together with the grant of permission itself.
8. Ms Everett did not seek to address me at length other than to say that she accepted that the First-tier Tribunal Judge had declined to make findings on the Regulation 15(1)(b) issue, and acknowledged that this was an error. She said that proper findings need to be made on that issue. She accepted that if I was in agreement with this, then the proper course would be to remit the matter to the First-tier Tribunal in order that a fresh hearing could take place and that primary findings of fact could be made. She said that this will require a proper evaluation of the documentary evidence which has been put forward. She did not seek to make any submissions concerning the point raised initially by the Respondent that the marriage between the Appellant and Mr N.E. was one of convenience.
9. I agree with the submissions made by Ms Everett. I find that this is a matter where it is essential that clear findings be made, as any such findings will go to the core of the question of revocation. This requires an evaluation of the relevant evidence on whether the Appellant’s EEA Sponsor had permanent residence in the UK. The answer to that issue will then reflect on the validity or otherwise of the Respondent’s decision to revoke the Appellant’s residence card.
10. It is right that this matter be determined initially in the First-tier Tribunal, since that is the Tribunal tasked with primary fact finding. I therefore set aside the decision of the FtT in its entirety, with the exception that the decision that the marriage between the Appellant and Mr N.E. was not one of convenience is to be regarded as settled.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and the decision is hereby set aside. The matter will be remitted to that Tribunal (not Judge R Hussain) for a fresh hearing and fresh findings of fact.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2018

C E Roberts

Date

27 February

Deputy Upper Tribunal Judge Roberts