



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

Appeal Number: EA/03256/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13<sup>th</sup> March 2018**

**Decision and  
Promulgated**

**On 15<sup>th</sup> March 2018**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**CHRISTIAN CHUKWUNYERE SIMON  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Yerokon of A & A Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Nigeria born in 1978. He applied for a residence card on the basis that he has a retained right of residence as the former spouse of an EEA national who had exercised Treaty rights in the UK. This was refused on 3<sup>rd</sup> March 2016. His appeal against the decision was dismissed under the EEA Regulations by

First-tier Tribunal Judge Brewer in a determination promulgated on the 30<sup>th</sup> May 2017.

2. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in the assessment of the period of time applied to qualify the appellant in terms of the exercise of Treaty rights by the appellant's former spouse.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions - Error of Law and Remaking*

4. It is argued in the grounds of appeal, in summary, that the appellant had argued that he was entitled to succeed on the basis of a retained rights of residence under Regulation 10(5) of the Immigration (EEA) Regulations 2006, henceforth the EEA Regulations, as is reflected in paragraph 25 of the decision. It is argued that in respect of Regulation 10(5) of the EEA Regulations that the appellant has shown he did cease to be the family member of an EEA national through divorce; and that this family member was a qualified person at the date of divorce. There was no need for that family member to have been a qualified person for five years prior to the termination of the marriage. However, the First-tier Tribunal errs by finding this to be a necessary condition at paragraph 24 of the decision. This is contrary to case law as well as what is said on the face of Regulation 10(5) of the EEA Regulations. Evidence in the bundle clearly shows that the appellant's wife was a qualified person at the date of divorce, and the First-tier Tribunal errs at paragraph 27 of the decision for failure to have reference to this material evidence.
5. Mr Duffy accepted that the First-tier Tribunal had erred in law as argued above. With respect to the remaking of the decision he accepted that the parties had lived in the UK for entire duration of their marriage.

#### *Conclusions - Error of Law*

6. The First-tier Tribunal clearly understood that Regulation 10 of the EEA Regulations was relevant and sets this provision out in full at paragraph 16 of the decision. The skeleton argument of the appellant clearly argued before the First-tier Tribunal that the appellant first qualified for a retained right of residence under Regulation 10(5) of the EEA Regulations, see paragraph 7 of that document. There is a finding at paragraph 27 of the decision which clearly errs in law in that it is said that the applicant's spouse was not a qualified person for this purpose without any relevant reasoning.

#### *Conclusions - Remaking*

7. The relevant requirements of Regulation 10(5) are as follows: In accordance with Regulation 10(5) (a) that the appellant ceased to be a family member of a qualified EEA national at the point of divorce. In accordance with Regulation 10(5)(b) that he was residing in the UK in

accordance with the EEA Regulations at the date of termination of the marriage. Further in accordance with Regulation 10(5)(d) of the EEA Regulations that the marriage lasted more than three years and that the parties resided in the UK for at least one year whilst married.

8. The decree absolute records that the appellant and Rudangela Gregoria Nicandra Romano were married on 26<sup>th</sup> April 2009 in London and divorced on 28<sup>th</sup> March 2013. Clearly the marriage lasted more than three years. There is evidence that the appellant was working for Surrey and Sussex NHS Trust in April 2013 in the form of his P60, and thus that he was residing in accordance with the EEA Regulations at the time of the divorce. It is accepted that Ms Romano is a Romanian national. There is evidence, in the form of payslips for March and April 2013 and a letter from her employer confirming that Ms Romano was working with Heathfield Solutions Limited at the time of divorce.
9. The only issue that remains to be determined is under Regulation 10(5) (d), namely whether the parties resided in the UK for a period of at least one year whilst married. It is accepted by Mr Duffy that this is the case, and I find that this position accords with the totality of the evidence before me.
10. As such I find that the appellant has shown that he meets all the requirements of Regulation 10(5) of the EEA Regulations and thus is entitled to a retained right of residence.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing under the EEA Regulations.

Signed: Fiona Lindsley

Date: 13<sup>th</sup> March 2018

Upper Tribunal Judge Lindsley

Fee Award

Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals. I have decided to make a whole fee award because it was accepted by Mr Duffy that the appeal was determined in the appellant's favour on the basis of the evidence provided to the respondent with the application.

Signed: Fiona Lindsley  
2018

Date: 13<sup>th</sup> March

Upper Tribunal Judge Lindsley