



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

Appeal Number: EA/03485/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> October 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**RITA OVIE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**IMMIGRATION OFFICER, HEATHROW**

Respondent

**Representation:**

For the Appellant: Dr C Ikegwuruka, Legal Representative Almonds Legals  
For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

In a decision dated 6 April 2018, I set aside for material error of law the decision of Judge James of the First-tier Tribunal (FtT) sent on 18 March 2017 dismissing the appeal of the appellant a citizen of Nigeria against the decision

made by the respondent on 3 April 2016 under the Immigration (European Economic Area) Regulations 2016 deciding to revoke the residence card issued to him on 1 July 2015 as the family member of an EEA (French) national because he had left the UK. The respondent also set removal directions under Regulation 19(3).

2. At paras 10-13 I stated that I did not consider I was in a position to re-make the decision, as clearly two central issues in the appeal had arisen (1) whether the appellant's partner is currently exercising treaty rights (and (2), given the burden of proof as regards revocation, whether the respondent was entitled at the date of decision to revoke the appellant's residence card. In relation to both, the HMRC evidence was incomplete. Given the backdrop of possible domestic violence, this was a case where I considered it would be appropriate to direct that the respondent take immediate steps to obtain the relevant tax history of the appellant's partner. I also directed the appellant's representatives to adduce such evidence as they could of the appellant's partner's correct whereabouts and employment.

3. In view of the fact that the appellant's case had already been before the FtT once before in relation to the same relationship, I did not consider it would be appropriate to remit to the FtT. I stated that the step would be a CMR (to be fixed for a date in May) at which the Tribunal would have an opportunity, in light of the further tax history evidence available, to take stock of whether a further hearing is necessary.

4. A CMR was held in August 2018 at which further clarification was provided about relevant documents that needed to be submitted and the case was set down for a further hearing before me on 1 October.

5. In light of my previous directions the appellant submitted DWP letters concerning Direct Earnings Attachments for the appellant's partner covering the period 2015-2017 and the respondent produced a letter from DWP stating that the HMRC confirming that the appellant's husband was in employment during tax year April 2015-April 2016. There was also produced by the respondent a witness statement from HMRC Case Investigation Officer R Drew confirming that Construction Industry Scheme records confirmed that the appellant's husband received income from employment in tax year 2017-2018 and had received income from employment in tax years 2015-6, 2016-2017 and 2017-2018.

4. Mr Bramble stated that in light of the further documentation now available it was clear that the respondent's decision to revoke the appellant's residence card dated 1 July 2015 was taken on a mistaken basis. He observed that it was also accepted that the removal decision made against the appellant could not stand. He confirmed as well that the evidence showed that the appellant was still the family member of a person exercising Treaty rights, irrespective of whether they were in a durable relationship or whether the appellant had been a victim of domestic violence.

5. Having considered the above documentation and Mr Bramble's submissions, the decision I re-make is to allow the appellant's appeal against the decision of the respondent to revoke the appellant's residence card and also her appeal against the decision giving directions for her removal. There can be no public interest in her removal given that her presence is protected by her ongoing EEA right of residence.

To summarise:

The decision of the FtT judge has already been set aside for material error of law.

The decision I re-make is to allow the appellant's appeal.

No anonymity direction is made.

Signed

Date: 8 October 2018

Dr H H Storey  
Judge of the Upper Tribunal