



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

Appeal Number: EA/03504/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 April 2018**

**Decision & Reasons Promulgated  
On 26 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**MS SAMEYA MANSOUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms P Yong, counsel

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge C J Wooley ("the FTTJ") promulgated on 7 February 2018.
2. No anonymity direction was sought and none is required.

## **Background**

3. The appellant was married to an EEA national. They subsequently divorced. The appellant sought a residence card pursuant to the Immigration (European Economic Area) Regulations 2006 (“the regulations”). That application was refused under those regulations.
4. The appellant appealed that decision on the ground, inter alia, that she had retained a right of residence under regulation 10. The FTTJ dismissed the appeal as follows: “The appeal of the appellant against the refusal to issue a residence card under Regulation 18 is dismissed under the 2016 [sic] EEA Regulations”.
5. Permission to appeal to this tribunal was granted in the First-tier Tribunal in the following terms:
  - ‘...
  2. The grounds assert that the Judge erred in failing to allow the appeal under Regulation 10(5) as he found that she had a retained right of residence.
  3. It is arguable that the Judge should have allowed the appeal under Regulation 10 as he found the requirements satisfied notwithstanding that he dismissed her appeal under Regulation 15. Regulation 18 provides for the issue of a residence card in such circumstances.”
6. Hence the matter came before me.

## **Discussion and Findings**

7. I indicated at the outset of the hearing that it appeared there may be some merit to the grounds of appeal to this tribunal, given that there was no cross-appeal by the respondent with regard to the fact finding of the FTTJ in the context of regulation 10.
8. Ms Pal, for the respondent, accepted that the FTTJ had found at [18] that the appellant “was exercising treaty rights as if she were an EEA national at the date of termination [of the marriage]”.
9. The FTTJ explained his reasons for that finding at [16] – [18]. These findings of fact and reasoning are not challenged by the respondent.
10. Nor does the respondent challenge the FTTJ’s conclusion at [19] that  
“... the appellant meets the conditions of Regulation 10 so as to be regarded as a family member who had retained the rights of residence at the date of termination. The periods of residence are met and the marriage lasted for the required time. Her EEA national and she were both working at the date of termination.”

11. The FTTJ then went on to consider whether the appellant had a right of permanent residence. He found she did not. That finding is not challenged by the appellant before me and I need not consider it.
12. The appellant had applied for a residence card on the basis of having retained a right of residence. This is clear from the terms of the respondent's reasons for refusal letter. There is no reference in that letter to her having applied on the basis of an entitlement to permanent residence status. Despite this the respondent went on to consider regulation 15 (mistakenly, Ms Pal told me).
13. The grounds of appeal to the First-tier Tribunal make it clear the appellant only claimed to have a retained right of residence. Thus the issue was live before the FTTJ.
14. Ms Pal accepted, appropriately, there was no challenge to the findings of fact of the FTTJ or indeed his conclusion at [19] that the appellant had demonstrated she fulfilled the criteria in regulation 10. That being the case and, given the terms of the respondent's decision, the reasons for refusal (which addressed regulation 10) and the grounds of appeal, the FTTJ should have allowed the appeal pursuant to regulations 10 and 18. The FTTJ, in considering the appeal pursuant to regulation 15, appears to have overlooked his earlier positive findings pursuant to regulation 10. Those findings warranted a successful outcome pursuant to regulations 10 and 18.
15. Thus the decision contains a material error of law and must be set aside. The FTTJ's findings are preserved and I remake his decision and allow the appeal, adopting the FTTJ's reasoning at [16] - [19] of his decision.

### **Decision**

16. The making of the decision of the First-tier Tribunal did involve a material error of law, as set out above.
17. I set aside the decision.
18. I re-make the decision of the FTTJ by allowing the appeal.

Signed

***A M Black***

Date 24 April 2018

Deputy Upper Tribunal Judge A M Black

**Fee Award**

The FTTJ did not make a fee award. Although I have remade the decision and allowed the appeal, I make no fee award because the success of the appeal is based largely on documentary evidence produced after the date of decision and on the appellant's oral evidence at the hearing. This was not available to the respondent at the date of her decision.

Signed

***A M Black***

Date 24 April 2018

Deputy Upper Tribunal Judge A M Black