



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

Appeal Number: EA 00920 2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 January 2019**

**Decision & Reasons  
Promulgated  
On 5 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ANAIS [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

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

**DECISION AND REASONS**

1. This is an appeal by a national of Rwanda against a decision of the First-tier Tribunal to dismiss her appeal against a decision of the Respondent to refuse her a residence card as confirmation of her right to reside in the United Kingdom.
2. Throughout these proceedings it has been her case that she is entitled to such a residence card because she has resided in the United Kingdom with her father for a continuous period of five years when he had been exercising treaty rights. The waters have been muddied because of a


change in circumstances, particularly because the relevant period included times when the claimant was a student and times when she was not a student but living in the family home, and it is not clear exactly what the First-tier Tribunal Judge intended to consider.

3. I have been helped very considerably by Mr Duffy who has assisted me by listening patiently as I have asked questions of the appellant in an effort to distil the points that I thought important and his chipping in uninvited but exceedingly aptly to draw attention to relevant points on the way.
4. I should make it plain that the Appellant is a highly educated woman whose conduct before me was entirely obliging and I mean her no discourtesy when I say that the appeal touches on a potentially complex area of law with difficult facts. The need to ask questions slowly might be more a reflection of me than her. I think we have got there in the end.
5. The critical point is that in order to succeed the appellant had to show that she was a family member of an EEA national and had resided with the EEA national in the United Kingdom for a continuous period of five years during the time that the EEA national was exercising treaty rights. There is some confusion about whether the EEA national was exercising treaty rights throughout the time that he has been present in the United Kingdom. There is a short period of time when there is no direct evidence of economic activity and it may be that he was not exercising treaty rights in that time or it may be that he was exercising treaty rights because he was taking steps to prepare to set up a business. This does not matter because it is plain that a business that was contemplated was set up and there have been five years of residence with the EEA national since the business was established.
6. The difficulty is that the First-tier Tribunal Judge appears, understandably, to have taken an overly literal construction of the requirements of Rule 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 which say that the right will be acquired by a person "who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years". For some of the time relied on the appellant was a student and, as might be expected, was not actually living in the family home for much of the year; she was living in university accommodation for which her father paid. This is not "living with" in the colloquial sense but I am quite satisfied that it is, or at least is capable of, being within the meaning of "residing with" for the purposes of the Regulation.
7. The point here is not a question of who lives under a particular roof but whether the person is dependent on the EEA national, and it is not unusual for young people who are in the eyes of the law fully adult and mature to be dependent in many ways on their parents as they complete their education.

8. I am satisfied that it was accepted by the First-tier Tribunal Judge that the Appellant was “living with” her father in this sense. This is what the Judge found at paragraph 20 of the Decision and Reasons and Mr Duffy, helpfully and realistically, made it plain that he was not trying to suggest that any other interpretation should be given to that paragraph.
9. I am satisfied having heard the submissions of both parties that the First-tier Tribunal Judge misdirected herself and applied the wrong test and that if she had applied the right test to those findings she would have allowed the appeal.
10. I therefore find the First-tier Tribunal erred in law.

**Notice of Decision**

11. I set aside the First-tier Tribunal’s decision and I substitute a decision allowing the appeal against the decision of the Secretary of State. This appeal is therefore allowed.

  
Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 18 January 2018