



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
EA/04014/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision & Reasons  
Promulgated**

**On: 5<sup>th</sup> November 2018**

**On: 11<sup>th</sup> February 2019**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE  
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALBERT GREZAJ  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**For the Appellant: Mr Clarke, Senior Home Office Presenting Officer**

**For the Respondent: Ms Clarke, Counsel instructed by Fadiga & Co**

**DECISION AND REASONS**

1. The Respondent is a national of Albania born in 1981. On the 23<sup>rd</sup> May 2018 the First-tier Tribunal (Judge Hussain) allowed his appeal with reference to Regulation 10 (5) of the Immigration (European Economic Area) Regulations 2016. In short summary the Judge accepted that Mr Grezaj had resided in the United Kingdom in accordance with the Regulations for a period of five years before his marriage came to an end, and that he continued to be economically

active himself: he therefore retained a right of residence under the Regulations. In making that finding the Judge relied, in large measure, on some HMRC records relating to Mr Grezaj's employment history. These records had been submitted by Mr Grezaj's representatives after the hearing. The Judge had decided that it was not necessary to invite comment from the Secretary of State on that evidence, and had proceeded to allow the appeal.

2. On appeal the Secretary of State, quite understandably in our view, takes issue with the approach of the First-tier Tribunal. The grounds protest that it is manifestly unfair to weigh in the balance evidence that one party has not had the opportunity to see or make submissions on.

3. Before us Mr Clarke maintained the Secretary of State's complaint, but invited us to allow Mr Grezaj's appeal on alternative grounds. The matter was therefore settled by consent by the parties on the following grounds:

- i) Mr Grezaj was married to his EEA spouse on the 13<sup>th</sup> June 2009 and the marriage subsisted until the 4<sup>th</sup> September 2015;
- ii) At all material times the couple resided in the United Kingdom;
- iii) It is apparent from the material supplied (*inter alia* by HMRC) that both Mr Grezaj and his wife were economically active for (at least) a continual five year period between 2010 and 2015;
- iv) Mr Clarke indicated that Mr Grezaj's wife qualified for permanent residence during the currency of the marriage, and that consequent to Regulations 15(1)(b) and 10(6)(a) so did Mr Grezaj;
- v) It followed that Mr Grezaj did not need to establish that he 'retained' a permanent right of residence upon annulment of his marriage, since he had already accrued such a permanent right of residence when the marriage was still subsisting.

## **Decisions**

4. The determination of the First-tier Tribunal is flawed for 'error of law', namely procedural unfairness.

5. We substitute the decision of the First-tier Tribunal with a decision allowing Mr Grezaj's appeal by consent.

6. There is no order for anonymity.

Upper Tribunal Judge Bruce  
5<sup>th</sup> November 2018