



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/08578/2017**

Appeal Number:

EA/004

54/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Decision & Reasons Promulgated
Centre
On 21 June 2019**

On 25 June 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**TETLANA SYDORCHUK
BASHYR SULEYMA SYDORCHUK
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants who were respectively born on 30 December 1968 and 24 August 2005 are citizens of Ukraine. They appealed to the First-tier Tribunal against a decision of the Secretary of State dated 10 October 2017 to refuse to grant them residence cards as confirmation of their right to reside in the United Kingdom as family members of an EEA national exercising Treaty Rights in the United Kingdom. The First-tier Tribunal, in a decision promulgated on 18 May 2018, dismissed their appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The first appellant is the wife of the sponsor, Mr Kodok. The second appellant is their child. First appellant and sponsor are separated but remain legally married. At the initial hearing at Birmingham on 21 June 2019, Mr Mills, who appeared for the Secretary of State, told me that the respondent did not oppose the appeal. The respondent accepts that the sponsor had not resided outside the United Kingdom for a period of more than 12 months (as the judge had also found) and, in consequence, his absence had not affected his right to permanent residence. He told me that the respondent accepted that the sponsor had enjoyed a right of permanent residence from 2010 and that, by operation of regulation 15(1) (b) of the Immigration (European Economic Area) Regulations 2016, the appellants had themselves acquired permanent residence by 2015 by the operation of regulation 14. The judge's findings did not reach that same conclusion, despite the fact that the judge found that the sponsor had not lost his right to permanent residence on account of his absence from the United Kingdom [20] and acknowledged [18] that there had been no need for the sponsor and first appellant to cohabit in order for the appellants to obtain rights of residence. The judge's conclusions do not logically follow from her findings of fact. In the circumstances, I agree with the representatives that the judge erred in law. I find that her decision should be set aside and, moreover, that I should remake the decision allowing both appeals against the decision of the Secretary of State to deny the appellants residence cards.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 18 May 2018 are set aside. I have remade the decision. The appeals of the appellants against the decision is of the respondent dated 10 October 2017 are allowed.

Signed

Date 21 June 2019

Upper Tribunal Judge Lane