



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

Appeal Number: EA/07157/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 28th January 2020**

**Decision & Reasons Promulgated
On 30th January 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**MR AMAIE BADR
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Zeb, Invictus Lawyers

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Egypt. On 21st December 2017 he applied for a permanent residence card as confirmation that he is the former family member of an EEA national exercising treaty rights in the UK, who has a retained right of residence. His application was refused by the respondent for reasons set out in a decision dated 22nd February 2018. The appellant's appeal against that decision was dismissed by

First-tier Tribunal Judge French (“the judge”) for reasons set out in a decision promulgated on 21 May 2019.

2. The judge referred to the relevant provisions of the Immigration (European Economic Area) Regulations 2016 (“the 2016 regulations”), at paragraph [2] of his decision. The judge noted *inter alia* the requirement in Regulation 21(5) of the 2016 Regulation that the application must be accompanied by a valid national identity card or passport in the name of the EEA national. The judge also noted that even if the appellant had provided the original national identity card or passport of the EEA national, the application would still fail unless Regulation 15(1)(f) is satisfied.
3. At paragraph [3] of his decision the Judge noted the appellant’s claim that valid documentation had been produced in respect of a previous application for a residence card that had been granted by the respondent in April 2012 and which was valid until 10th April 2017. At paragraph [4] of the decision, the judge refers to the other evidence relied upon by the appellant in support of the appeal to demonstrate that he has resided in the UK in accordance with the Regulations for a continuous period of five years and, was, at the end of the period, a family member who has retained the right of residence as set out in Regulation 10(5).

At paragraph [5] of his decision, the judge stated:

“It was my view that it was not permissible to submit ID documentation in support of this application that was not valid.

The judge considered it insufficient to say that the documentation had been accepted for a previous application and did not consider that the production of a document that is out of date, meets the legal requirements. At paragraph [6], the judge stated:

“I did not consider that the appellant had provided a satisfactory explanation for the failure to provide valid identification for the “sponsor”. He did not say why he had not submitted an application for permanent residence at an earlier stage, what

efforts he made to contact her to obtain valid documentation through mutual friends or her employers...”

4. The judge did not make any particular findings as to whether, on the evidence before the Tribunal, Regulation 15(1)(f) is satisfied.
5. The appellant claims the judge erred in failing to take into account the evidence of the appellant by way of explanation for not having submitted an application for permanent residence at an earlier stage, and the steps taken to locate his former partner, the EEA national, and obtain the required identity document. Furthermore the appellant claims the judge failed to consider Regulation 42 of the 2016 Regulations, that permits an applicant to provide alternative evidence of identity and nationality where the person is unable to obtain or produce the required documents due to circumstances beyond their control. Permission to appeal was granted by First-tier Tribunal Judge Swaney on 12th June 2019.
6. Before me, Mr McVeety accepts the judge should have had regard to Regulation 42 of the 2016 Regulations. The fact the appellant had previously provided a valid national identity card or passport in the name of the EEA national, when he made his previous application for a residence card that had been granted by the respondent in April 2012, should have been sufficient when taken together with the explanation provided by the appellant regarding the attempts made by him to locate his former partner. Mr McVeety candidly refers to the decision of the Upper Tribunal in Rehman (EEA Regulations 2016 – specified evidence) [2019] UKUT 000195 (IAC), in which Upper Tribunal Judge Canavan held that the provisions contained in Regulations 21 and 42 must be interpreted in the light of European Union law and in some cases, this might involve ignoring the requirement for specified evidence altogether if a document is not in fact required to establish a right of residence. Here, as in Rehman, Mr McVeety accepts the respondent had accepted the appellant was

married to an EEA national when he was issued with the previous residence card.

7. Mr McVeety, rightly in my judgement, accepts that the focus of the First-tier Tribunal Judge was upon the fact that the appellant had not provided a valid national identity card or passport in the name of the EEA national, and the decision of the judge is vitiated by a material error of law.
8. Having had an opportunity to review the evidence that was before the First-tier Tribunal, Mr McVeety accepts the appellant is able to establish that he has resided in the UK in accordance with the Regulations for a continuous period of five years and, was, at the end of the period, a family member who has retained the right of residence as set out in Regulation 10(5). It follows that the evidence establishes that the appellant has a right of permanent residence under Regulation 15(1)(f) and the appeal should be allowed.
9. In the circumstances, I set aside the decision of First-tier Tribunal Judge French and remake the decision, allowing the appeal.

Notice of Decision

10. The decision of FtT Judge French promulgated on 21st May 2019 is set aside.
11. The appeal is ALLOWED on EU Law grounds.

Signed

Date 28th January 2020

Upper Tribunal Judge Mandalia