



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

Appeal Number: IA/00096/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 17 September 2014**

**Determination**

**Promulgated**

**On 2 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**ALSTON BOSCO BARRETTO**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The appellant appeared in person

For the Respondent: Mr I Jarvis (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant's appeal against a decision to refuse to issue him with a "permanent residence card" was dismissed by First-tier Tribunal Judge Tully ("the judge") in a determination promulgated on 9 June 2014.

2. The appellant claimed to be the family member of an EEA national and to fall within regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”). The Secretary of State found that he had not provided evidence that the EEA national he relied upon had resided in the United Kingdom in accordance with the 2006 Regulations for a continuous period of five years. Similarly, he had not provided evidence showing that he had resided with a family member for the same period. There were no other adverse findings.
3. The judge determined the appeal on the basis of the documentary evidence before her, in the light of the appellant’s indication in his notice of appeal that he did not require a hearing. She noted that although the appellant had completed a notice of appeal, he had failed to complete parts of the notice showing why he disagreed with the Secretary of State’s decision. Further, no evidence was submitted in support of his case. The judge dismissed the appeal.
4. The appellant applied for permission to appeal, stating that he did not understand why his appeal was not linked to an appeal brought by his father, Mr Luzitano Barretto (IA/51557/2013). The two appeals were brought at the same time and all of the supporting documentary evidence, showing the family circumstances and periods of residence, were sent with his father’s appeal.
5. His father’s appeal was allowed by a judge, in a determination promulgated on 19 May 2014.
6. Permission to appeal was granted on 4 August 2014, on the basis that there may have been procedural unfairness. The appellant and his father made a joint application to the respondent. Both were refused by the Secretary of State on 18 November 2013. The appellant’s appeal was decided on the papers at the Stoke Hearing Centre, whereas his father’s case was decided at Hatton Cross.
7. In a Rule 24 response from the Specialist Appeals Team, made on behalf of the Secretary of State on 13 August 2014, the Upper Tribunal was advised that the matter had been referred to “European Litigation” as it appeared that there was merit in the argument that procedural unfairness had occurred.

### **Error of Law**

8. Mr Alston Barretto appeared in person. He was accompanied by his father, Mr Luzitano. Mr Jarvis said that he had spoken to the author of the Rule 24 response. No reply had yet been received from European Litigation and the Secretary of State had not taken a view on issuing a residence card to the appellant. It was clear that the appellant’s case was determined after his father’s and that there were attempts to get the matters linked. The documents sent in support of Mr Luzitano’s case were not present in his

son's case and were not seen by the judge determining his appeal. There may have been unintentional unfairness.

9. The appellant said that he wanted his case joined with his father's and the documents they relied upon were provided in his father's case. The two cases should have been dealt with together.

### **Conclusion on Error of Law**

10. I find that there has been unintentional, procedural unfairness. It is clear that the appellant and his father made their applications for a residence card on the same occasion and that they intended to rely on the same evidence in support. The Secretary of State properly considered the two applications together and made adverse decisions in each case on 18 November 2013. The applications were refused in the absence of evidence showing residence in the United Kingdom in accordance with the 2006 Regulations. For no apparent good reason, once the appeals were lodged, the files were separated. Mr Luzitano's case was determined at Hatton Cross in March 2013 and the appellant's case in Stoke-on-Trent on 5 June. All the evidence the appellant wished to rely upon was before the judge at Hatton Cross. Mr Luzitano was issued with a residence card on 8 September 2009 and sought permanent residence as the family member of an EEA national, his wife, in September 2013. The judge recorded at paragraph 12 of the determination in Mr Luzitano's case that the supporting evidence related to the EEA national sponsor and to Mr Luzitano and his son, Mr Alston. That evidence included bank statements relating to joint accounts, and wage slips and P60s showing the employment histories of the sponsor, Mr Luzitano and Mr Alston. There were also tenancy agreements showing the shared occupation of premises by the sponsor and Mr Luzitano and P60s and letters showing that Mr Alston occupied the same premises (two in all, over a period of time) as his father and the sponsor. The judge carefully weighed that evidence and concluded that Mr Luzitano's appeal fell to be allowed as the requirements of regulation 15(1)(b) of the 2006 Regulations were met.

### **Re-making the Decision**

11. Mr Jarvis said that the Secretary of State had made only one objection in the appellant's case. There appeared to be a lack of supporting evidence. Mr Alston said that he relied on the same documents as were before the Tribunal in his father's case. Mr Luzitano said that the documents relied upon in his case were the only ones they had.
12. Mr Luzitano's file was also before me. It contained the documentary evidence he relied upon in his appeal, determined by First-tier Tribunal Judge Seifert in March 2013. Her determination is thoroughly reasoned. I have taken into account her favourable findings of fact, as I have the documentary evidence before her, which formed the basis of her assessment. I find that the evidence shows that the requirements of

regulation 15(1)(b) of the 2006 Regulations have been met in Mr Alston's case. He has shown that he has resided with the EEA national he relies upon for a continuous period of five years and that his father's wife has resided in the United Kingdom in accordance with the 2006 Regulations for the same, continuous, period.

13. The appeal is allowed.

**DECISION**

14. The appeal is allowed: the appellant has shown that the requirements of regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 have been met.

15. There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

**TO THE RESPONDENT**  
**FEE AWARD**

In re-making the decision, the Upper Tribunal may make any order which may have been made in the proceedings by the First-tier Tribunal. As I have allowed the appeal, I make a whole fee award in respect of the fee paid or payable in these proceedings.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell