



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

Appeal Numbers: EA/02064/2016
EA/02066/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 5th April 2018**

**Decision & Reasons
Promulgated
On 17th April 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**FRANK UWAILA ROBERT EDOKPOLOR
UYI ANTHONY IGHODARO
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms M Malhotra (instructed by Wilsons Solicitors)
For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellants in this case against a judgment of the First-tier Tribunal, Judge Cooper, promulgated on 2nd January 2018 after a hearing on 29th November 2017. The circumstances of the appeal are that there are two Appellants who are citizens of Nigeria and are cousins. They had applied for permanent residence cards under the EEA Regulations on the basis that they had been exercising treaty rights for five years. The Secretary of State refused

the appeals on the basis that they had not shown that they had been either dependents or members of their Sponsor's household for a continuous period of five years in order to qualify. At the appeal the Judge heard evidence from the Appellants and their EU national Sponsor. There was a conflict in the evidence as to how long they had been dependents or members of their Sponsor's household, but being as generous as he could the Judge found that the latest they were was in 2014.

2. The Appellants had initially been granted residence cards as extended family members on 16 September 2010. The Judge, in considering whether or not they were entitled to succeed said that he had to look back from the date of application and they had to establish five years from then. In that he was wrong. The Appellants needed only to establish that they had been family members residing in the UK for a continuous period of 5 years. That can be any period of five years. However, the Judge's overall decision to dismiss the appeal was correct and any error by him was therefore immaterial. For the reasons for that one must look at the EEA Regulations. Regulation 15, which governs who is entitled to a permanent right of residence, lists those people as being an EEA national who has been resident for a continuous period of five years in accordance with the Regulations, a family member of an EEA national who has been similarly resident in accordance with the Regulations for a continuous period of five years, and other persons who are not relevant for the purpose of this appeal. Note that it is family members and EEA nationals; not extended family members.
3. The definition of family members is contained in paragraph 7 and it is accepted that these Appellants up until the time they were granted residence cards were not family members but extended family members.
4. Regulation 7(3) however provides that a person who is an extended family member and has been issued with an EEA family permit, registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in Regulation 8(2), (3) or (5). Therefore, someone recognised and granted a residence card as an extended family member then becomes, for the purposes of the Regulations, a family member. However, there is a requirement that they must have been issued with such a document and unless and until they are, they are not treated as family members. If they are not family members they are ineligible to apply for permanent residence.
5. The Appellants in this case have only therefore been family members since the issue of the residence cards in 2010. They would therefore have to show that they had been residing in accordance with the Regulations, namely dependent upon or members of the household of their EEA national Sponsor for a continuous period of five years from September 2010. That they are unable to do, it being their own evidence that they are no longer dependent on nor members of their Sponsor's household and have not been, on a most generous interpretation, since 2014.

Accordingly they could not possibly succeed in relation to their application for permanent residence cards.

Notice of Decision

6. The appeal to the Upper Tribunal is dismissed.
7. There has been no application for an anonymity direction nor is one appropriate under these circumstances and I make none.
8. Similarly, as the appeals have been dismissed there can be no fee award.

Signed

Date 12th April 2018

Upper Tribunal Judge Martin