



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03590/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 August 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR MANJIT BAJWA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Sharma, Counsel instructed by Justin Law Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 23 July 2018 I found that First-tier Tribunal Judge Coaster in his decision promulgated on 23 February 2018 made a material error of law and set aside that decision. The only issue that had been in contention before Judge Coaster was whether the appellant's wife (the sponsor) had been exercising Treaty Rights in accordance with the Immigration (EEA) Regulation 2006 ("the 2006 Regulations") since she married the Appellant on 4 June 2010.

2. In remaking the decision I heard submissions from Mr Sharma on behalf of the appellant and Mr Bramble on behalf of the Secretary of State.
3. In support of the appellant's claim he submitted, inter alia, documents obtained from HMRC concerning the sponsor's employment and benefits record. Mr Bramble had not had sight of these documents before the hearing and I adjourned in order to give him sufficient time to consider them.
4. After considering the documents from HMRC, Mr Bramble accepted that the sponsor had been exercising Treaty Rights from the marriage in 2010 until the present time, as the HMRC evidence established that she had worked from 2010 until 2013 and had thereafter been temporarily unable to work and then permanently incapacitated. The sponsor therefore, in his view, acquired a permanent right of residence under Regulation 15(1)(a) on the basis that she was a qualified person under Regulation 6(1)(b) and 6(2)(a) until she became permanently incapacitated, whereupon she was a worker who had ceased activity under Regulation 5(3). He accepted that if the appellant is married to the sponsor he acquired a permanent right of residence under Regulation 15(1)(b), as a family member of the sponsor.
5. Mr Bramble raised the issue of whether the appellant was in fact married to the sponsor as in the medical report of Dr Wolski dated 11 January 2017 it is said that she lives alone and was accompanied by a friend and there was no reference to her being married. Whilst I agree with Mr Bramble that it is surprising that Dr Wolski did not mention the appellant is married, the HMRC documentation states that the sponsor is married and I find this to be persuasive. I therefore accept the appellant's claim that he is, and has been since 2010, married to the sponsor.
6. Given that the respondent now accepts that the sponsor is, and has been for the requisite period of time, a qualified person, and that the evidence before me supports that the appellant and sponsor are married and have been since 2010, I allow the appellant's appeal against the decision of the Secretary of State to refuse his application for a residence card as a family member of an EEA national.

**Notice of Decision**

The appellant's appeal is allowed.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 11 September 2018