Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/12442/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1st October 2018

Decision & Reasons Promulgated
On 8th November 2018

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

IKE SAMUEL NWORA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Balroop, Counsel, instructed by SLA Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge N M K Lawrence (the judge), promulgated on 8 June 2018, in which he dismissed the Appellant's appeal against the Respondent's refusal to issue him with a permanent residence card under Regulation 15 of the Immigration (European Economic Area)

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Regulations 2006. It was the Appellant's case that he had previously been issued with a residence card in this country, covering the period 1 April 2011 to 1 April 2016 on the basis that he was an extended family member of his brother, a German national (the sponsor). It was said that the Appellant had been a member of the sponsor's household throughout his time in the United Kingdom and that this situation subsisted.

The judge's decision

2. The judge dealt with the case on the Appellant's assertion that he was a member of the sponsor's household [8]. He referred in his decision to the Court of Appeal's judgment in KG (Sri Lanka) [2008] EWCA Civ 13 and then appeared to direct himself that the fact of living under the same roof as an EEA national was not sufficient to bring the Appellant within the ambit of Regulation 8(2) of the Regulations. At [12] of his decision the judge appears to have accepted that the Appellant had indeed been living with the sponsor but then went on to conclude that the Appellant could not succeed in his appeal.

The grounds of appeal and grant of permission

3. The judge's decision was challenged in fairly lengthy grounds. The core point raised therein is that the judge misdirected himself in law as to the meaning of membership of a household. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 1 August 2018.

The error of law issue

4. Prior to the hearing the Respondent submitted a Rule 24 notice. It was effectively accepted that the judge had materially erred in law and the Appellant's appeal was to be unopposed.

5. At the hearing before us Mr Clarke, in his customary fair manner, fully accepted what the Rule 24 notice said and accepted that the judge had gone wrong in law. In our view this concession was entirely justified. It was unclear to us what the judge was saying in respect of any self-direction on the law. There were also additional omissions in the decision, including a failure to make findings on relevant matters and a failure to give reasons for the ultimate conclusions reached.

6. There are clearly material errors of law in the decision of the First-tier Tribunal and we set it aside.

Remaking the decision

7. We canvassed with the representatives as to whether this matter could be remade on the evidence now before us. Both representatives were agreed that it could, this being on the basis that the issue in the appeal is fairly narrow. It is accepted that the Appellant had indeed been issued with a residence card running from 1 April 2011 to 1 April 2016, and this had been on the basis that he was an extended family member of the sponsor. In respect of the application for permanent residence, the relevant period is therefore the currency of that residence card at a time when, by virtue of Regulation 7(3) of the Regulations, the Appellant would have been regarded as a "family member" of the sponsor. It was also agreed that the case for the Appellant was being put on the basis that he had been a member of the sponsor's household: financial dependency was not being relied upon.

8. In light of this Mr Balroop took us through the relevant evidence contained in the two bundles from the Appellant and that included in the Respondent's bundle. We were referred to a variety of sources of documentary evidence relating to the period in question and the Appellant's residence at the relevant address, including utility bills, bank statements, correspondence from HMRC, and documents relating to employment (pages 20, 35, 50, 57, 60-62, and 65 of the Appellant's bundles and annex F of the Respondent's). We were also referred to documentary evidence connecting the sponsor to the relevant address.

9. For his part Mr Clarke identified what in the end appeared to be a seven-month gap in the documentary evidence running between July 2013 and February 2014. He suggested that it would have been quite possible for the Appellant to have obtained documentary evidence relating to this particular period and that the absence of such evidence was material.

10. In reply Mr Balroop suggested that we should be looking at the evidence in the round and applying the balance of probabilities. Any relatively short gap was not fatal to the Appellant's case.

11. Having considered the evidence as a whole, specifically the documentary evidence referred to us, and applying the balance of probabilities, we find that the Appellant was in fact residing with the sponsor throughout the relevant period, namely 1 April 2011 to 1 April 2016.

12. The documentary evidence emanates from a variety of sources, the reliability of which had not been undermined by anything else before us or by way of submissions. In addition, we give weight to the written evidence of both the Appellant and the sponsor. Mr Clarke was perfectly entitled to point out the evidential gap, and a gap there is, between July 2013 and February 2014. Having regard to the evidence as a whole and applying the balance of probabilities, we agree with Mr Balroop that this does not fatally undermine the Appellant's case. It seems to us extremely unlikely that given his overall residential history, the Appellant would have left his brother's household for a short period of time for no apparent reason and then returned some seven months' later.

13. In light of this core finding of fact, the Appellant resided for a continuous period of five years in accordance with the Regulations and, as of 1 April 2016, acquired a permanent right of residence in the United Kingdom. There has been no suggestion that he has lost that acquired right at any stage thereafter.

14. In light of the foregoing the Appellant is entitled to be issued with a permanent residence card and his appeal is allowed.

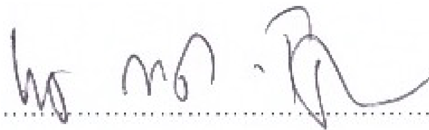
Notice of Decision

The decision of the First-tier Tribunal contained errors of law and we set it aside.

We remake the decision for ourselves and determine that the Respondent's decision of 26 September 2016 breaches the Appellant's rights under the EU Treaties.

The Appellant's appeal is therefore allowed.

No anonymity direction is made.



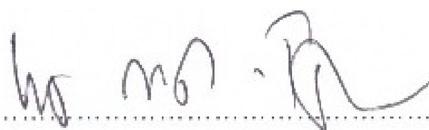
Signed Date: 4 October 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make a full fee award of £140.00.



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