



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/19734/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 December 2017**

**Decision & Reasons  
Promulgated  
On 3 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ROBERTO WILSON PILAHUANO ESCOBAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Mr N Jeganathan, Solicitor of Acculaegal Solicitors  
For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. By my decision promulgated on 29 August 2017. I found that the decision of the First-tier Tribunal contained an error of law and set it aside. I now remake the decision.
2. The appellant is a citizen of Ecuador whose application for a permanent residence card under the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”) was refused by the respondent.

3. The respondent's reason for refusing the application was that insufficient evidence was submitted by the appellant to establish that his wife, a national of Spain with whom he has been married since 2006, had been exercising Treaty Rights in the UK for the requisite five year period under section 15(1)(b) of the 2006 Regulations.
1. Section 15(1)(b) of the 2006 Regulations provides that a permanent right of residence will be acquired by a family member of an EEA national who has resided in the UK with the EEA national family member in accordance with the 2006 Regulations for a continuous period of five years.
2. It is not in dispute that the appellant is the family member of an EEA national and that they have resided together in the UK for the requisite period. The only issue is whether the appellant's wife has been exercising Treaty Rights for over five continuous years.
3. Mr Kandola acknowledged that the respondent has issued a residence card to the appellant's wife recognising that she has a right to permanent residence on the basis of having exercised Treaty Rights in the UK for a continuous period of five years and that as a consequence the reason for refusing the appellant permanent residence under Section 15(1)(b) falls away.
4. Accordingly, as the requirements under Section 15(1)(b) of the 2006 Regulations are satisfied, the appeal is allowed.

### **Notice of Decision**

1. The decision of the First-tier Tribunal contains a material error of law and is set aside.
2. I remake the decision by allowing the appellant's appeal under the 2006 Regulations.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 2 January 2018