



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/21509/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 13 March 2018

**Decision & Reasons
Promulgated
On 09 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MS EHINOMEN BARBARA ELIBOH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam, Representative.

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who appealed against a decision of the Respondent to revoke her Residence Card pursuant to Regulation 20 of the Immigration (European Economic Area) Regulations 2006. Her appeal was heard by Judge of the First-tier Tribunal Robinson who, in a decision promulgated on 21 April 2017 dismissed it.
2. An application for permission to appeal was refused. However, a renewed application was granted by Judge of the Upper Tribunal Andrew Jordan on 18 January 2018. His reasons for so granting were: -

- “1. The determination is not assisted by the First-tier Tribunal Judge’s concluding words that the appellant had not established she had acquired a right to reside in the United Kingdom as an extended family member of an EEA national exercising Treaty rights. That was very far from being the issue.
2. This was an application for a retained right of residence under reg. 10 which the respondent refused. The Judge did not appear to appreciate that since he classified the decision as a decision to revoke her residence card. In fact, the revocation of the residence was merely the result of the refusal of her application for a retained right of residence.
3. The First-tier Tribunal Judge did not set out the requirements for a retained right of residence. Had he done so, he might then have considered whether those requirements were met. Reg. 10 is a structured claim requiring certain distinct elements to be met which the First-tier Tribunal Judge did not address, including, perhaps, whether the couple were married. (No marriage certificate was before the decision maker or the First-tier Tribunal). Does the grant of a residence card prove marriage? Does the divorce court concern itself about the validity of a foreign marriage? – arguably it does not. There are then the additional requirements of marriage of convenience; 3 years of marriage; 12 months in the United Kingdom (from when to when?); his exercising Treaty rights at the date of decree absolute; the appellant exercising quasi (reg.10(6) Treaty rights) and when (at date of decree absolute; application; hearing)?
4. We know that the appellant’s husband was not found to be truthful/persuasive about his relationship with Ms Aroyewun but what does that say about his relationship with this Appellant? The Judge seems to have assumed that as he lied to Judges Farrelly and Boardman, the appellant must not be telling the truth but this may be a non-sequitur.
5. This is far from saying the appeal will succeed but it acknowledges that, if the appeal is to be rejected, it has to be rejected because the requirements of the Regulations were not met. The Judge found that the appellant had not established a genuine and durable relationship but what is the relevance of a genuine and durable relationship in a Reg. 10 case? The genuine and durable relationship plainly does not exist at the date of decree absolute but then no-one was suggesting it did.
6. Neither the grounds nor the First-tier Tribunal refusal of permission appear to address these Robinson-obvious points.

Permission to appeal is granted.”

3. Thus, the appeal came before me today.

4. Mr Wilding accepted Judge Jordan's analysis in relation to the failure of the First-tier Tribunal Judge to set out the requirements for a retained right of residence. However, he contended that the First-tier Tribunal Judge had not erred as the structured approach highlighted by Judge Jordan only applied if it was found that this was not a marriage of convenience. Only if it were a genuine marriage would the approach apply. Hence, he concluded the Judge had not erred.
5. Mr Alam highlighted paragraph 4 of Judge Jordan's decision which flows from paragraph 4 of the grounds seeking permission to appeal, where it was submitted that there was perversity as the Judge had failed to consider the prospect that as it was found that the Appellant's husband had lied to two previous Judges that might not necessarily be the position in this appeal.
6. I find that the analysis of Judge Jordan reflects my own assessment of the position in this appeal and for all the reasons therein highlighted the Judge has materially erred.

Decision

The making of the decision in the First-tier Tribunal involved the making of an error on a point of law the decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Robinson.

No anonymity direction is made.

Signed

Date 5 April 2018.

Deputy Upper Tribunal Judge Appleyard