



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/08078/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 9th April 2019
2019**

**Decision and
On 12th April**

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

**MR GHOUSE MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr B Haseldine, Counsel, instructed by AKL Solicitors
For the respondent: Ms S Chuna, Senior Presenting Officer

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge NMK Lawrence who dismissed his appeal against the respondent's revocation of his residence card. He had been issued with this on the basis he was in a family member of Ms Rostas, a Romanian national exercising Treaty rights. The decision revoking his residence card was dated 27 September 2017 and was because the respondent was not satisfied he was in a durable relationship with Ms Rostas.

2. The appeal hearing took place at Hatton Cross on 14 January 2019. Neither party was represented and the appellant was absent. First-tier Tribunal Judge Lawrence referred to a Notice of Hearing being sent to the appellant and his legal representatives on 5 July 2018. The judge was aware that on 20 December 2018 the respondent wrote to the tribunal indicating they wanted to withdraw the decision. The tribunal staff had contacted the respondent requesting details of the reasons for the withdrawal so the matter to be considered under rule 17 of the procedural rules. On the basis reasons were not received, the matter remained in the list.
3. First-tier Tribunal Judge Lawrence did not accept the withdrawal. The judge was satisfied the parties had been properly notified and proceeded to hear the appeal in their absence. At paragraphs 9 to 13 the judge set out the background details and referred to the absence of evidence about the relationship.
4. There was an earlier decision refusing the appellant confirmation he was entitled to permanent residence. His claim was on the basis he had lived here in accordance with the regulations for five years. The refusal did not accept the relationship was durable and questioned the employment details provided.
5. His appeal against that decision was heard by Judge of the First-tier Tribunal Dhanji on the 16th of May 2018. First-tier Tribunal Dhanji concluded that the sponsor's evidence corroborated the appellant's account about the relationship as did the evidence of various witnesses called. There had been a temporary breakdown in the relationship and then a reconciliation. The judge saw nothing arising which called into question the credibility of the appellant or the witnesses and concluded that the relationship was durable and subsisting. Following on from this successful appeal the appellant was issued with a permanent residence card.
6. It was in light of this the respondent sought to withdraw the revocation decision. There is correspondence to this effect within the file. There is no reference by First-tier Tribunal Judge Lawrence to this earlier decision and the subsequent correspondence.
7. Permission to appeal the decision of Judge Lawrence was granted on the basis of the grounds advanced: primarily, that the decision is inconsistent with the decision of First-tier Tribunal Dhanji.
8. Ms S Chuna accepts that there has been a procedural irregularity and the decision of First-tier Tribunal Judge Lawrence errs in law as it appears to be given in ignorance of the earlier decision. The Devaseelan principle would apply as the earlier decision dealt with the same point. The appellant's representative agreed with this.
9. In light of the presenting officer's concession, which accords entirely with the background evidence in the file, I find a material error of

law established and set the decision aside. I remake the decision allowing the appeal against the revocation decision. This outcome has for practical purposes been superseded by the subsequent grant of a permanent right of residence but provides the means to dispose of the appeal.

Decision

The decision of First-tier Tribunal Judge Lawrence materially errs in law and is set aside. I remake the decision allowing the appeal.

Deputy Upper Tribunal Judge Farrelly.

Dated 10 April 2019