



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/05829/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 January 2020  
Decision given orally**

**Decision & Reasons Promulgated  
On 2 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MR MARYAN HRYHEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Panagiotopoulou, Counsel, instructed by Yemets Solicitors

For the Respondent: Ms Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

The appellant is appealing against the decision of First-tier Tribunal Judge Henderson promulgated on 3 September 2019.

The appellant is a citizen of Ukraine. In 2010 he married an EEA national (a citizen of Lithuania) and was issued with a residence card as her spouse. They divorced in 2015.

On 22 June 2018 the appellant applied for a residence card to confirm he was a former family member of an EEA national exercising treaty rights who had a retained right of residence following the end of his marriage. He enclosed a photocopy of his former wife's passport with the application.

On 7 July 2018 the application was refused by the respondent solely on the basis that Regulation 21(5) of the Immigration (European Economic Area) Regulations 2016 had not been satisfied because an original valid passport or national identity card had not been submitted.

The appellant appealed to the First-tier Tribunal, where the appeal was heard by First-tier Tribunal Judge Henderson. The judge dismissed the appeal.

At the start of the hearing Ms Jones conceded that (a) the decision contained an error on the point of law and should be set aside; and (b) the appeal should be remade in the appellant's favour. She explained that the respondent was making this concession because the only reason the appellant's application had been refused was that an original identity document for his former partner had not been submitted and in light of *Rehman (EEA Regulations 2016 specified evidence)* [2019] UKUT 000195 it was not sustainable to refuse the application on this basis.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. I remake the decision by allowing the appeal.

Signed



Upper Tribunal Judge Sheridan

Dated: 13 February 2020