



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

Appeal Numbers: IA/14050/2013
IA/16450/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 16th January 2014**

**Determination
Promulgated
On 5th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR KASHIF QURESHI
MASTER FARAZ KASHIF
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K M McCarthy (Counsel)

For the Respondent: Ms Z Kiss (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellants' appeals (the first appellant is the father of the second) against decisions to refuse to issue them with residence cards, confirming a permanent right of residence in the United Kingdom, were dismissed by First-tier Tribunal Judge Thomas ("the judge") in a determination promulgated on 8th November 2013.

2. In January 2010, the appellants were issued with residence cards as family members of the first appellant's former wife, a Spanish national exercising treaty rights here. The couple were married in August 2009. The first appellant and his wife separated in November 2012. On 18th December that year, he applied for a residence card confirming a right to reside permanently, on the basis that he had been living with an EEA national for a period of five years, in accordance with the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations"). He lived with her initially as an extended family member and then, from August 2009, as a spouse.
3. The judge noted that the first appellant appeared to have relied in the past on retained rights of residence under Regulation 10 of the 2006 Regulations. However, there was no evidence showing that the marriage had terminated. She found that the first appellant had to show that he fell within Regulation 15(1)(b) of the 2006 Regulations and took into account guidance given in PM [2011] UKUT 89. The first appellant's residence card was issued on the basis of his marriage and not on the basis that he was in a durable relationship as an unmarried partner of an EEA national. Regulation 15(1)(b) applied where both parties had resided in the United Kingdom for five years since the marriage and where the claimant had resided as the family member of an EEA national. The residence card currently possessed by the first appellant was issued on 28th January 2010 and was valid until 28th January 2015. Five years since the marriage in August 2009 would not elapse until August 2014 at the earliest. The judge concluded that the appellant did not fall within Regulation 15 and was not entitled to a residence card confirming a right to reside here permanently. As he still possessed his residence card, valid until January 2015, and as there was no decision to remove him, the adverse decision did not interfere with his Article 8 rights (or those of anyone else).
4. An application was made for permission to appeal. The author of the grounds identified the issue as whether time spent as a "durable partner" could count towards the accrual of time under Regulation 15 of the 2006 Regulations. The evidence showed that the first appellant and his partner began to live together in August 2008, before they were married. On this basis, the first appellant could show five continuous years' residence, in accordance with the 2006 Regulations, initially as a durable partner and then as a spouse. Regulation 15 simply required a continuous period of five years' residence.
5. It was also contended in the grounds that the EU law principle of equal treatment, confirmed in Reed [1986] EUECJ R-59/85 mandated the United Kingdom to provide at least the same residence rights for a durable partner as a spouse. It would be unreasonable to deny the appellant "permanent residence" because he did not hold a residence card while present here as an unmarried partner, whereas such time would have counted, had he been a spouse.

6. Permission to appeal was granted on 2nd December 2013. In a short rule 24 response, the Secretary of State requested an oral hearing and indicated that she opposed the appeal as the First-tier Tribunal Judge had directed herself appropriately.

Submissions on Error of Law

7. Ms McCarthy (who was not the author of the grounds and who did not appear before the First-tier Tribunal) said that in issue was the first appellant's status between 2007 and about 2010. The residence card issued to him and which he still possessed was evidence of the right to reside rather than something conferring the right itself. It appeared to recognise that the appellant was an extended family member, within the 2006 Regulations, prior to his marriage.
8. Ms Kiss handed up a copy of the Directive, which showed clearly the right of permanent residence for union citizens and their family members (in Article 1), the definition of a family member (Article 2) and the wider class of beneficiaries (Article 3.2).
9. There then followed a short discussion on the 2006 Regulations and, in particular, Regulation 15(1)(b). This identifies as a person acquiring the right to reside in the United Kingdom permanently "a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years". This Regulation must be read with Regulation 7(3), which provides that a person who is an extended family member "and has been issued with an EEA family permit, a registration certificate or a residence card" shall be treated as the family member of the relevant EEA national, for so long as certain conditions set out in Regulation 8 are met and the permit, certificate or card has not ceased to be valid or been revoked.
10. It is clear that the first appellant cannot show that he falls within Regulation 15(1)(b). He became a family member of an EEA national following his marriage in August 2009. Before his marriage, he co-habited with his partner but, as no residence card or similar document was issued to him at the time, although he was an extended family member, he did not fall to be treated as a family member of the relevant EEA national.

Conclusion on Error of Law

11. No error of law has been shown in the decision. The judge correctly found that the first appellant was not entitled to the particular residence card he applied for as he does not fall within Regulation 15(1)(b) of the 2006 Regulations and so both appeals fell to be dismissed. The skeleton argument before the First-tier Tribunal and the grounds in support of the application for permission to appeal make no mention of Regulation 7(3) of

the 2006 Regulations. In the present case, the application of this Regulation shows that although the first appellant was in a durable relationship with his partner before they married, he was not to be treated as her family member, because no residence card or similar document was issued to him.

12. The broader discrimination point raised in the grounds and in the skeleton argument has not been made out. The Directive itself, and the 2006 Regulations, provide for rights of residence to family members and extended family members and there is nothing in Reed supporting the proposition that our domestic code, contained in the 2006 Regulations, unlawfully discriminates against extended family members or those falling within Article 3.2 of the Directive.

DECISION

The decision of the First-tier Tribunal contains no material error of law and shall stand.

ANONYMITY

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell