



IAC-BFD- MD

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

Appeal Number: IA/22980/2014

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 21<sup>st</sup> August 2015**

**Decision & Reasons Promulgated  
On 7<sup>th</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MS MARIA PAULA MARTINEZ RODRIGUEZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant a citizen of Colombia born 2<sup>nd</sup> June 1985 appeals with permission against the decision of the First-tier Tribunal (Judge M B Hussain) in which it dismissed the Appellant's appeal against the Respondent's refusal to grant her a Residence Card as the family member of a French national exercising Treaty rights in the United Kingdom under the EEA Regulations 2006.

**Background**

2. The Appellant entered the UK on an unknown date as a student. She remained as a student, being granted various extensions to her leave - the last being valid to 4<sup>th</sup> February 2014.
3. In October 2011 she and her Sponsor, Mr Fabio Lafranca a French national, started a relationship and on 4<sup>th</sup> January 2014 they married in London.
4. Following her marriage, the Appellant applied, in March 2014, for a Residence Card under Regulation 6 of the EEA Regulations 2006. This was refused by the Respondent in May 2014 on the grounds that the Appellant had failed to show evidence that her husband was exercising Treaty rights for the relevant period and that he was a qualified person within the EEA Regulations.
5. The Appellant appealed the refusal and her appeal came before the First-tier Tribunal, who dealt with the matter on the papers at the Appellant's request. The appeal was dismissed by a decision promulgated on 18<sup>th</sup> December 2014.
6. Permission to appeal that decision was sought and whilst initially refused this was granted on a renewed application before the Upper Tribunal.
7. The grant of permission reads as follows.

“The grounds of appeal assert that the Judge of the First-tier Tribunal had erred in his consideration of the appellant's application for a residence card on the basis that her husband was an EEA national exercising Treaty rights.

Having considered the evidence before the judge I consider that the grounds of appeal are arguable.”

Thus the matter comes before me.

### **Error of Law/Upper Tribunal Hearing**

8. I find I am able to deal with this matter briefly. I am grateful to Mr Walker for his assistance in this regard.
9. Short evidence was taken from the Sponsor, who confirmed that he had resided in the UK continuously since the time he had gained permanent residence. He confirmed he had not been absent from the UK for any period exceeding two years.
10. Having heard that evidence and having had sight of all the documents put forward on behalf of the Appellant, (scheduled under the heading 'Index' and containing Annexes A to H) Mr Walker said he was satisfied that this evidence showed that the Sponsor had continuously retained his permanent residence in the UK since 8<sup>th</sup> February 2007. Furthermore, he was satisfied that the documents confirmed that the Sponsor had not been absent from the UK for a period exceeding two consecutive years. Therefore the conditions for the Appellant being granted a Residence Card

as a family member of an EEA national were met. There has never been any challenge to the relationship between the parties.

11. Mr Walker invited me to find that the FtT Judge had erred in his decision; to set the decision aside and to remake it allowing the Appellant's appeal.
12. I agree with that course.

**Decision**

13. The decision of the First-tier Tribunal, dismissing the Appellant's appeal against the Respondent's refusal of 19<sup>th</sup> May 2014, to grant a Residence Card under the EEA Regulations 2006, is set aside. The decision is remade. The Appellant's appeal is allowed.

No anonymity direction is made

**Signature**

Judge of the Upper Tribunal

**Dated**

**Fee Award**

As I have allowed the appeal I have decided to make to make a whole fee award of any fee which has been paid.

**Signature**

Judge of the Upper Tribunal

**Dated**