



IAC-FH-CK-V1

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

Appeal Number: IA/25197/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2016**

**Decision & Reasons Promulgated
On 3 March 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR RAFIK HAMAIMI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer

For the Respondent: Mr J Collins, Counsel instructed by BMAP

DECISION AND REASONS

1. The respondent is a citizen of Algeria and his date of birth is 20 April 1972. I will refer to him as the appellant as he was before the First-tier Tribunal.
2. The appellant's appeal was allowed by Judge of the First-tier Tribunal Kanagaratnam in a decision promulgated on 24 August 2015 following a hearing on 5 August 2015. Permission was granted to the Secretary of State in a decision of Judge of the First-tier Tribunal Frankish on 15 December 2015 and thus the matter came before me. The appeal was allowed under the EEA Regulations 2006. The issue turned on whether or

not the appellant had been working continuously for a period of five years and was entitled to permanent residence.

3. At the start of the hearing the parties agreed that the author of the grounds did not have before him the appellant's evidence contained in the appellant's bundle that had been before the First-tier Tribunal Judge (this evidence was unfortunately not referred to by the judge in his decision). However, it is conceded that the evidence that was before the First-tier Tribunal Judge supported the appellant's employment up until 2015 and therefore the gap referred to in the grounds of appeal at paragraph 8 did not accurately reflect the evidence that was before the judge. It was conceded that there was no break in continuity. My conclusion inevitably is that the judge was entitled to reach the conclusions that he did in relation to the appellant's employment which would entitles him to permanent residence under the EEA Regulations 2006. Thus there is no error of law.
4. There is a point raised at paragraph 7 in the grounds of appeal which asserts that for the purposes of permanent residence the date is calculated from the divorce date. It is asserted that this is when the five year period commences for the purposes of permanent residence. However, as conceded by Mr Kotas, this does not accurately reflects EU law and there is no error of law in the decision of the First-tier Tribunal relating to this issue.
5. The decision of the First-tier Tribunal to allow the appeal on the basis that the appellant is entitled to permanent residence is maintained and as such is entitled to be issued with a document certifying permanent residence and a permanent residence card.

Notice of Decision

The Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 26 February 2016

Upper Tribunal Judge McWilliam