



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

Appeal Number: EA/01855/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2017**

**Decision &
Promulgated
On 14th July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ABDELGHANI BOUMELLAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Abdelghani Boumellah, was born on 28 July 1979 and is a male citizen of Algeria. The appellant entered the United Kingdom illegally in August 2006. He married an EEA national (the sponsor, who is an Italian citizen) on 7 January 2009. On 11 March 2010, he was issued with a residence card which expired on 11 March 2015. On 6 May 2015, the

appellant applied under Regulation 15 of the Immigration (European Economic Area) Regulations 2006 in respect of his status as a family member of an EEA national. The appellant was required to show that he had resided in the UK with the EEA national for a continuous period of five years (Regulation 15(1)(b)).

2. The First-tier Tribunal (Judge M A Khan), in a decision promulgated on 30 November 2016, dismissed the appellant's appeal against the refusal of the respondent dated 12 October 2015 to grant permanent residence. The appellant now appeals, with permission, to the Upper Tribunal.
3. At the appeal hearing at Field House on 12 July 2017, the appellant did not attend nor was he represented. By a letter dated 30 June 2017, the appellant's previous solicitors (Ashton Ross Law) had written to the Tribunal to inform it that they were no longer acting for the appellant. In that letter, the solicitors confirmed the appellant's place of residence to be [] London SE18 6RJ. The Tribunal file shows that a notice of hearing for 12 July 2017 was served by first class post on the appellant at that address on 21 June 2017. There was nothing on the file to indicate that the notice did not reach its intended recipient. No explanation or excuse for failing to attend has been received from the appellant. In the circumstances, I proceeded with the hearing in the absence of the appellant.
4. Having heard the submissions of Mr Jarvis, I reserved my decision.
5. The grounds of appeal assert first that the judge miscalculated the five year period during which the appellant himself was a worker up to and including December 2011. Secondly, in reliance upon the case of **Saint Prix (case C-507/12)**, it is argued that the judge failed to take into account the fact that, following the birth of her child, the sponsor should have had a reasonable period within which to seek work and thereby assert her rights under the Treaty. Thirdly, the grounds submit that the judge did not reject the evidence adduced regarding the sponsor's attempts to find work following the birth of her second child. The grounds submit that, if the judge intended to reject that evidence and find that the sponsor had not been a jobseeker during that period, then the determination was unclear and insufficiently reasoned; on the other hand, if the judge had accepted the evidence, then it is not clear why he dismissed the appeal.
6. Mr Jarvis accepts that the decision of Judge Khan is not particularly clear but he submitted that any error which that decision might contain is not material to the outcome of the appeal. He pointed out that the sponsor was not registered with any relevant employment office and also that the sponsor had not returned to work following the birth of her first child but had, indeed, become pregnant with her second child, an event that indicated that she had no prospect of gaining employment and that she was, therefore, not a worker for the purposes of Regulation 6(2). Mr Jarvis also submitted that any period of cohabitation preceding the marriage of the appellant and sponsor on 7 January 2009 should not be considered

when applying the regulation. If he had sought to rely on a period of cohabitation, it would have been necessary for the appellant to prove to a decision-maker that there was a durable relationship subject to Regulation 8(5). The appellant made no such application and, in consequence, the earliest date from which any period of 5 years must run would be from January 2009 until January 2014. Mr Jarvis submitted that the sponsor had not been exercising Treaty Rights throughout the period 5 years and that the appeal could not in any event succeed. I accept Mr Jarvis' submissions in their entirety. I agree that Judge Khan's decision appears incomplete and unsatisfactory but I refrain from setting aside his decision on the basis that any error which it may contain is not material to the outcome of the appeal. I agree with Mr Jarvis that the 5 year period in question must run from 2009-2014 and that the evidence which has been adduced clearly shows that the sponsor was not exercising Treaty Rights throughout that period; in particular, between the birth of her two children and following the birth of the second child, the evidence fails to support the contention that the sponsor had been a jobseeker.

7. In the circumstances, I dismiss the appeal.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 12 JULY 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 12 JULY 2017

Upper Tribunal Judge Clive Lane