



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02443/2015

THE IMMIGRATION ACTS

Determined on the Papers at Field House
On 5 March 2018

Decision & Reasons Promulgated
On 16 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR NAZIM TOUHAMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The Appellant, a national of Algeria, date of birth 22 July 1979, applied for and was refused a residence card that is for permanent residence as a divorced family member of an EEA national. His application was refused on 21 October 2015 for reasons set out in a Notice of Immigration Decision. The refusal was with particular reference to Regulations 6, 10 and 15 of the Immigration (European Economic Area) Regulations 2006, (the 2006 Regulations). His appeal against that decision came before First-tier Tribunal Judge Hall (the Judge) who dismissed the appeal. Permission to appeal was given by Deputy Upper Tribunal Judge Chapman on 6 September 2017. The Respondent made a Rule 24 response on 28 September 2017

and I heard the error of law hearing on 17 November 2017 in which I found that the Judge had failed to address the evidence that was given or make sustainable findings. In the light of that I decided that the Original Tribunal's decision could not stand and that the matter should be remade in the Upper Tribunal.

2. I gave directions accordingly and no further documentation or submissions have been provided. The substance of the Respondent's original criticisms were that the Appellant had failed to provide appropriate and sufficient documentation which went to show that his former spouse was working as required at material times under the 2006 Regulations. Through the help of a friend, Ms Tavares, the documentation had been provided, including authoritative documents issued by HMRC, that showed the Appellant's former spouse had been working at material times so as to enable the Appellant to qualify for permanent residence.
3. No issue was taken as to the reliability of the information which Ms Tavares had been able to produce nor to the substance of the HMRC documentation. In the circumstances, when no issue had been raised, the Judge's criticisms of the documents such as they were, were not sufficient. I find the documentation sufficiently reliable for the Appellant to show he has discharged the burden of proof upon a balance of probabilities that he met the relevant requirements for permanent residence.
4. There were therefore no further issues taken as to the factual requirements that the Appellant needed to establish to maintain his claim under Regulation 15 as to the right to permanent residence.
5. In these circumstances the only reasonable conclusion that can be reached is that the Appellant has proved that his former spouse was employed at the date of divorce. The other documentation including payslips and an employer's letter all form part of a consistent picture together with that from HMRC which shows the likelihood of employment of his ex-spouse.

6. In the light of the Judge's other findings I conclude that the Appellant had done enough to establish that entitlement to permanent residence under Regulation 15 and accordingly, there being no other impediment or criticism of the Appellant's suitability by reference to the Rules, that a permanent residence card should be issued.

NOTICE OF DECISION

The appeal is allowed.

No anonymity was sought nor is one required or appropriate.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

A fee of £140 was paid and in the circumstances the appeal having succeeded on the basis of the information that was subsequently provided to that of the Respondent's decision but essentially was provided to the Judge, I find that a fee award is appropriate and I make one in the sum of £140.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey