



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/03338/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 9<sup>th</sup> November 2018**

**Promulgated**

**On 27<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MS MARGARET CHINYERE EZEIGBO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms M Malhotra (instructed by Victory Solicitors)  
For the Respondent: Ms L Kenny (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an application to the Upper Tribunal, by the Appellant, in relation to a judgment of First-tier Tribunal Judge Hussain who, after a hearing at Hatton Cross on 18<sup>th</sup> May 2018, by a Decision and Reasons promulgated on 20<sup>th</sup> June 2018, dismissed the appeal.
2. The appeal was by a Nigerian national who entered the UK in January 2009 as a visitor. She overstayed and when served with a notice that she should leave the UK, applied for a residence card as the durable partner of an EEA national. A residence card was duly issued on 21<sup>st</sup> July 2011. She then applied for a permanent residence card and it was the refusal of that

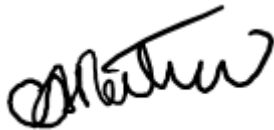
application which was the subject of the appeal before the First-tier Tribunal.

3. There seems to have been some confusion in that the Secretary of State was under the impression, apparent from the Letter of Refusal, that she and the EEA national were married. They were not; nor were they civil partners.
4. The Judge heard evidence from the Appellant and from one witness (a friend of the Appellant) and found, on the basis of evidence obtained by the Secretary of State from HMRC, that the EEA national had not been exercising Treaty rights as there was no record of him being self-employed or employed between 2010 and 2017.
5. The Judge referred to a non-molestation order which the Appellant had produced. The Judge clearly misunderstood the purpose of that thinking it had been submitted to establish that the EEA national was in the UK at the relevant time. In fact it was relied upon as an explanation for why the Appellant could not provide financial evidence from her Sponsor; namely because she was afraid of him.
6. The Judge erred in a number of ways. The first was his misunderstanding about the non-molestation order and the second was that he failed to make any findings about the witness's evidence. Whilst the case was not the strongest, the Appellant was entitled to a proper reasoned judgment with findings made on the evidence she adduced. She did not have that and for that reason I set aside the judgment.
7. All the evidence being within the file, I am able to proceed straightaway to redecide the appeal. Both representatives accepted that to be the case. In so doing I note that, as the Appellant is not married to the EEA national, her reliance upon Regulation 10 is ill founded. She is not a spouse or civil partner and therefore cannot claim retained rights of residence.
8. Furthermore, even if she could rely on Regulation 10, she has not shown that the Sponsor was exercising Treaty rights. Whilst there was evidence from a witness, that evidence attracts little weight. It was no more than a bald assertion that the EEA national had said he was working, trading in cars and working for a wine shop. However, that is nowhere near sufficient to outweigh the evidence of HMRC.
9. The evidence relied upon by the Appellant to explain why she could not obtain financial information from the EEA national, namely the ex parte non-molestation order is also inadequate. An ex parte application is obtained by an applicant going to court, without anybody from the other side, and claiming to be at risk from the respondent. At most they get a temporary, short-lived order which has to be served on the respondent and the matter is listed for an inter partes hearing when the matter is finally adjudicated upon. That appears not to have happened in this case and therefore the ex parte order is of little evidential value. It is evidence only that the Appellant went to court and persuaded a Judge, without opposition, that she was in need of protection.

10. For all those reasons the Appellant in this case cannot succeed. She would have to show that she had five years' residence in accordance with the Regulations. She has not done that and therefore the appeal must be dismissed.
11. There was no anonymity direction made in the First-tier Tribunal. I see no justification in making one today.

**Decision**

The appeal to the Upper Tribunal is dismissed

A handwritten signature in black ink, appearing to read 'Martin', written in a cursive style.

Signed

Date 21<sup>st</sup> November 2018

Upper Tribunal Judge Martin