



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01723/2019**

THE IMMIGRATION ACTS

Heard at Field House *via Microsoft Teams* Decision & Reasons Promulgated
On 17 May 2021 On 26 May 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**HECTOR JOSE RODRIGUES ALVAREZ
(ANONYMITY ORDER MADE IN RESPECT OF APPELLANT'S WIFE, 'BB')**
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Anonymity

An order is made under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant's wife, 'BB'. This direction applies to, amongst others, BB, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

**For the Appellant: Ms. K McCarthy, Counsel, instructed by Direct Access
For the Respondent: Mr. P Deller, Senior Presenting Officer**

DECISION AND REASONS

Introduction

1. The appellant is a national of the Dominican Republic who seeks a permanent residence card as confirmation of a permanent right of residence as the spouse of an EEA citizen.
2. His appeal was initially refused by the First-tier Tribunal by means of a decision dated 25 September 2019. He was granted permission to appeal and by a decision dated 7 April 2021 this Tribunal (Judges Gill and O'Callaghan) set aside the decision of the First-tier Tribunal.
3. By its decision of 7 April 2021 this Tribunal confirmed that the following findings of fact made by the First-tier Tribunal were preserved:
 - i) The appellant and his wife, BB, were in a genuine relationship: [10] of the First-tier Tribunal's decision.
 - ii) The finding at [17]:

'I do not accept that the evidence before me shows that [BB] wanted money to assist the appellant. Nowhere in the messages does she state that. What is stated is that her passage, presumably to the UK, would be paid for. I do accept that she strongly rejects that and makes clear that she is not prepared to help the appellant. There is clearly acrimony [between] them for whatever reason. That may well lie in the issue described above.'
4. It was further confirmed that the First-tier Tribunal's summary of the oral evidence given by the appellant and his supporting witnesses, at [12]-[15], stood.

Anonymity

5. An anonymity order was issued by the Tribunal on 7 April 2021 in respect of the appellant's wife, BB. The Tribunal was satisfied that in circumstances where records of BB's employment and social security history were directly relevant to its consideration of this appeal an anonymity order should properly be made to prevent a disproportionate interference in BB's protected article 8 rights arising from her identity being made public. Such interference with article 10 rights was proportionate in circumstances where BB was not a party to proceedings and was unaware that elements of her private life were being considered by this Tribunal.
6. No request was made by the parties to set the order aside. In the circumstances I am satisfied that it remains proportionate for the order to continue.
7. The anonymity order is confirmed in the terms set out above.

Background

8. The appellant is aged 48. He first entered the United Kingdom in 2003 as the spouse of a diplomat, Ms Juliet Solomon, who was working for the

Commonwealth Secretariat, London. They have a daughter from this marriage, Ms. Jade Rodriguez Solomon. The couple divorced in 2004.

9. The appellant commenced a relationship with a Spanish national, BB, who was residing in the United Kingdom prior to their marriage which took place in New York in July 2006. The appellant was issued with an EEA family permit as the husband of a qualified person under the Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations') and entered the United Kingdom on 2 October 2006. He was subsequently issued with a residence card as a family member of an EEA national from September 2007 to September 2012.
10. The relationship between the appellant and BB broke down in late 2011, though they remain married. BB returned to Spain in 2015.
11. An earlier application made by the appellant for a permanent residence card in 2013 was refused by the respondent and the First-tier Tribunal dismissed his appeal by a decision dated 5 December 2014. Judge Oliver noted, *inter alia*, that the appellant had failed to provide any corroborative documentary evidence as to BB exercising EEA Treaty rights in this country and so found that the appellant failed to satisfy the requirements of regulation 15(1)(b) of the 2006 Regulations.
12. A subsequent application for leave to remain on human rights (article 8) grounds was refused by a decision of the respondent dated 31 October 2017 and the First-tier Tribunal (Judge Veloso) dismissed the appellant's appeal by a decision dated 12 December 2017.
13. The appellant applied again for an EEA permanent residence card. The respondent refused the application under the Immigration (European Economic Area) Regulations 2016 by a decision dated 7 October 2019.

Decision

14. At the outset of the hearing Mr. Deller informed me that the respondent was prepared to accept that the appellant's appeal should succeed. However, though the parties were progressing along the path of agreeing the basis upon which the appeal was to be allowed they had not reached a mutually agreed basis by the time the hearing commenced. With the agreement of the parties, I directed that a consent order be filed by 4pm on 24 May 2021, thereby permitting the parties a week to reach a mutually agreeable basis for the allowing of this appeal.
15. On 19 May 2021 the Tribunal received a consent order signed by both the appellant and Mr. Deller. I detail its contents below:

CONSENT ORDER UNDER RULE 39(1)

Pursuant to Rule 39(1) of the Upper Tribunal Procedure Rules 2008, the parties consent to the disposal of the above appeal on the following agreed basis and ask that the Tribunal produces the required determination accordingly.

1. The Secretary of State accepts on the evidence provided that [BB], Mr Rodriguez Alvarez's second wife, entered the United Kingdom with him on 2 October 2006 and was an EEA qualified person as defined in Regulation 2 for the entirety of the following five years, as some combination of a worker, a job seeker and potentially a self-sufficient person. Mr Rodriguez Alvarez, it is accepted, therefore acquired a right of permanent residence in the United Kingdom on 2 October 2011 as he resided for the same five-year period as a family member under Regulation 7. He has not lost this status as he has not been absent for any two-year period since.
 2. Previous applications were rejected on the basis that no evidence of [BB's] identity had been provided, but this was disposed of in the First-tier Tribunal and the point is not maintained.
 3. A previous application under the EU Settlement Scheme has also been refused on the basis that [BB] was not accepted to be a Spanish national. That conclusion, whether based on a lack of identification documents or confusion with Mr Rodriguez Alvarez's first wife, is now recognised as incorrect.
 4. Accordingly the instant appeal under regulation 36 of the 2016 Regulations falls to be allowed as the Secretary of State accepts that the decision to refuse to issue a document confirming permanent right of residence was contrary to Mr Rodriguez Alvarez's rights under the Regulations (and previously under the Treaties).
 5. For completeness, it is also accepted that Mr Rodriguez Alvarez has resided in the United Kingdom since and [BB] did so until returning to Spain in 2015. They remain married.
 6. The Secretary of State will now begin the process of recognising Mr Rodriguez Alvarez's position with the appropriate documentation and asks that a confirmatory determination be provided as soon as possible.
16. By means of an accompanying email, Mr. Deller confirmed that the consent order could appropriately stand as 'a full record of the nature and scope of the Secretary of State's concession of the case'.
 17. Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 permits the Tribunal, at the request of the parties but only if it considers it appropriate, to make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed. I have decided that the consent order cannot stand as the Tribunal's decision, solely because BB's actual name is detailed in the order and an anonymity order is in place. Consequently, I have placed the consent order on file and have proceeded to author this decision.
 18. I allow the appeal consequent to the respondent's confirmation that the appellant has enjoyed permanent residence in this country since 2 October 2011 and has not lost such status since this date. I am satisfied from a consideration of the papers before me that the respondent was correct to accept that the appellant qualified for permanent residence consequent to his wife, BB, exercising EEA Treaty rights in this country between 2 October 2006 and 2 October 2011.

Notice of Decision

19. By means of a decision dated 7 April 2021 this Tribunal set aside a decision of the First-tier Tribunal promulgated on 25 September 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
20. The decision on the appellant's appeal on this issue is re-made, and the appeal is allowed.
21. An anonymity order is made in respect of BB.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 20 May 2021

To the Respondent
Fee Award

I make no fee award.

Though the appellant was ultimately successful on appeal, I am satisfied that on the information available to the respondent her initial decision was one that was reasonably open to her.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 20 May 2021