



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

Appeal Number: IA/32550/2014

THE IMMIGRATION ACTS

Heard at : Field House

On : 9 March 2016

**Determination
Promulgated**

On : 24 March 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MICHAEL CHIZOBA IBEKWE

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Haji, instructed by Nathan Aaron Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 20 April 1975. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 7 August 2014

refusing his application for a Permanent Residence Card as the family member of an EEA national under the Immigration (European Economic Area) Regulations 2006.

2. The appellant was issued with a residence card on 17 June 2009. On 16 June 2014 he applied for a permanent residence card as the non-European Economic Area (EEA) national family member of his wife, a German national, who claimed to have exercised Treaty rights for a continuous period of five years in the UK in accordance with the EEA Regulations.

3. The appellant's application was refused on 7 August 2014 on the basis that he had failed to provide sufficient evidence to show that his EEA family member had been exercising treaty rights for a continuous period of five years. It was considered that he had provided evidence showing that the EEA national had exercised treaty rights between 2009 and 2011, but not before or after that period. He did not, therefore, meet the requirements of Regulation 15(1)(b) of the EEA Regulations.

4. The appellant's appeal was heard by First-tier Tribunal Judge Dickson on 31 March 2015 and dismissed in a decision promulgated on 10 April 2015. The judge, having considered the evidence before him, was satisfied that the EEA national sponsor had been working throughout the period covered by the tax years ending 5 April 2012, 5 April 2013 and 5 April 2014. He noted that the respondent accepted that she had been working from January 2009 to February 2011. He also noted that she was currently working for an employer who had offered her a job commencing in July 2014. However, on the basis that there was no evidence of the sponsor having worked or having sought jobseekers' allowance between 5 April 2014 and 16 June 2014, the judge found that the appellant had failed to satisfy him that his EEA national sponsor was exercising treaty rights for the five year period and that he was therefore not entitled to permanent residence under Regulation 15(1)(b).

5. Permission to appeal was sought on the grounds that the sponsor should have been considered as exercising treaty rights during the period April 2014 and June 2014 as she was actively seeking work. The appellant was self-sufficient and not a burden on the state during that period and was therefore entitled to permanent residence.

6. Permission to appeal, having been initially refused, was then granted on 13 August 2015 by Upper Tribunal Judge Storey on the grounds that the judge was arguably under the misconception that the sponsor had to show continuous employment or that in periods of unemployment that she was in receipt of jobseekers' allowance, rather than considering whether her record showed that she continued to be engaged with the labour market.

7. At the hearing before me, Mr Jarvis asked me to find that the judge had erred in law in his decision, since the EEA national sponsor had been exercising treaty rights during the period that she was looking for work, having previously been in employment and having then found employment. She had therefore

been exercising treaty rights for the relevant five year period. Mr Jarvis asked me to set aside the judge's decision and re-make the appeal by allowing it.

8. Ms Haji, understandably, was content with that outcome and had nothing to add.

9. Accordingly, for the reasons given by Mr Jarvis, I set aside the judge's decision and re-make it by allowing the appellant's appeal. In view of the fact that Mr Jarvis, for the respondent, has conceded the appeal both with respect to the error of law and the re-making of the decision, there is no need for me to make any detailed findings. I would simply state that, on the basis that the appellant has provided evidence to show that his EEA national sponsor was exercising treaty rights for a five year period during which he was her family member residing with her continuously in the UK, the appellant has met the requirements of Regulation 15(1)(b) for the acquisition of a right to reside in the UK permanently under the EEA Regulations. Accordingly the appellant's appeal against the respondent's decision is allowed under the EEA Regulations.

DECISION

10. The original Tribunal made a material error of law in their determination. The decision is therefore set aside. I re-make the decision and allow the appeal.

Signed
Date

Upper Tribunal Judge Kebede