



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/36995/2014

THE IMMIGRATION ACTS

Heard at Field House
On 18th April 2016

Decision & Reasons Promulgated
On 26th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR HAYAT ULLAH SAFI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Heidar (Solicitor)
For the Respondent: Mr L Tarlow (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse to issue him with a residence card, on the basis that he met the requirements of Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") was dismissed by the First-tier Tribunal in June 2015. That decision was set aside, as containing material errors of law, on 14th January 2016. The appeal was retained by the Upper Tribunal, for the purpose of remaking the decision.
2. The appellant relied upon the evidence contained in a bundle of documents prepared for the First-tier Tribunal hearing ("the first bundle") and a bundle containing bank statements and credit card statements ("the second bundle").

3. The issue between the parties is a narrow one. In refusing the application for a residence card as confirmation of a permanent right to reside in the United Kingdom, the Secretary of State made an adverse finding that the appellant had not shown that he had resided here continuously for a period of five years. Although he provided bank statements, utility bills and similar items in support of his claim, the decision maker found that there were too many periods of time in which evidence was missing.
4. In opening the case, Ms Heidar said that the Secretary of State's bundle for the First-tier Tribunal hearing included a summary sheet that showed that the appellant entered the United Kingdom in 2004. He applied for a residence card in 2010, on the basis of his marriage. The evidence before the First-tier Tribunal also included a copy of a page from the appellant's passport, issued in October 2010. In seeking a residence card confirming a permanent right to reside, the appellant had ticked the box confirming that proof of residence for the required period of years accompanied his application. In the first bundle before the First-tier Tribunal, documentary evidence included bank statements for June to July to September 2009 and for January and February 2010. The second bundle included bank statements for the period commencing in July 2010 and continuing until 2015. At the back of the second bundle there were credit card statements in copy form bearing dates from 2012 to 2016.
5. The appellant also relied on a letter from his GP which appeared in the first bundle at page 85, confirming registration as a patient from 2005 and letters from his bank and his MP and utilities bills showing his presence in the United Kingdom in each of the years from 2011 to 2014. The second bundle filled in some of the gaps.
6. The first bundle also contained witness statements made by the appellant and his wife, a Latvian citizen, Aleksandra Safi. In her statement, she confirmed that she has a right of permanent residence on the basis of five years' continuous residence here, as a person exercising treaty rights. In the same bundle between pages 19 and 89 were documents in Ms Safi's name and in the joint names of the appellant and his wife, including their tenancy agreements.
7. The appellant was called and gave brief evidence. He adopted the witness statement he made for the First-tier Tribunal hearing. There was no cross-examination. Ms Safi then gave evidence and adopted her statement. Each was in similar terms. Mr Safi drew attention to meeting his wife in November 2007, the commencement of cohabitation in September 2009 and their marriage on 5th February 2010. His wife was given a residence card as confirmation of a permanent right to reside here, on the basis that she had completed five years' continuous residence in the United Kingdom as a person exercising treaty rights. The appellant's application for a similar document was made in July 2014 and refused on 8th September that year. Mr Safi stated that he and his wife have lived together at several addresses. Ms Safi's statement referred to the same addresses and contained the same chronology regarding their relationship.

8. Mr Tarlow said that reliance was placed on the Secretary of State's decision letter. He had no further submissions to make.

Findings and Conclusions

9. In this appeal, the burden lies with the appellant to prove the facts and matters he relies upon and the standard of proof is that of a balance of probabilities. As noted earlier, the issue between the parties is a narrow one. Has the appellant shown a period of continuous residence here of five years, so that he falls within Regulation 15(1)(b) of the 2006 Regulations? He seeks a residence card confirming a permanent right of residence, similar to the document issued to his wife.
10. The evidence shows overwhelmingly that the appellant has indeed resided in the United Kingdom continuously for a period of at least five years. Having arrived here in 2004, he met his wife in 2007 and their marriage took place in early 2010. The first and second bundles contain many copy bank statements, which fill most of the gaps which concerned the decision maker when the application for a residence card was refused. Although one or two gaps remain, they do not remotely undermine the appellant's claim and the other documentary items, including the letter from his GP and the utilities bills, support his case. Weighing all the evidence together, I find that he has shown that he lived here continuously for a period of five years prior to the application for the document he sought in July 2014 and the evidence also shows that he has continued to reside here, with his wife, since then. Overall, it is clear that he falls within Regulation 15(1)(b) of the 2006 Regulations.
11. For these reasons, the appeal is allowed.

Notice of Decision

The decision of the First-tier Tribunal having been set aside in January 2016, it is remade as follows: appeal allowed.

Anonymity

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

A fee of £140 was paid when the appeal was issued. I have considered whether to make a fee award. Before the First-tier Tribunal, the evidence adduced by the appellant in documentary form did contain gaps. This deficiency was remedied when the second bundle was prepared, shortly before the decision was remade in the Upper Tribunal. In these circumstances, exercising the powers available to me, I make an award of half the fee, amounting to £70.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell