



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02030/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 July 2018  
Prepared 26 July 2018

Decision & Reasons Promulgated  
On 12 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR KWAME APPIAH KUBI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Uddin of counsel instructed by OTS Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Ghana, date of birth 7 June 1980 appealed against the Respondent's decision, dated 29 January 2016, to refuse a residence card with reference to Regulation 10, particularly Regulation 15, of the 2006 Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). On 23 May 2018 I concluded that the decision of First-tier Tribunal Judge Andonian, who had

dismissed the appeal, made a number of errors of law and in the result directed that the matter should be remade in the Upper Tribunal.

2. At the hearing today the issues have been significantly clarified in that with Mr Clarke's help and Mr Uddin's assistance it has been established that the five year period required was established because the evidence was produced. An examination of the PAYE returns, as also the self-employed earnings returns to HMRC, it was clear that the Appellant was not carrying out employment in a marginal or minimal level but rather was seeking to make his living through those earnings. It was clear without necessary to recite them that the evidence showed the employment periods in the years 2011/2012 and 2012/2013 and earnings which were not insignificant. There was no issue, in the end, whether or not they were sufficient to establish him as a person exercising rights.
3. Accordingly, it was also helpfully agreed that in fact the refusal was with reference to Regulation 15(1)(b) which stated "A family member of an EEA national who is not himself an EEA national but who has resided in the UK with the EEA national in association with these Regulations for a continuous period of five years" is the relevant Regulation rather than as stated elsewhere Regulation 15(1)(f) of the 2006 Regulations. Accordingly, there is no other issue taken that a right of residence had not been acquired. The Original Tribunal's decision having been set aside the following decision is substituted.

### **NOTICE OF DECISION**

The appeal is allowed under the 2006 Regulations.

No anonymity direction is made.

Signed

Date 2 November 2018

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

The appeal has succeeded on the basis of the evidence originally submitted. In those circumstances I can see no reason why a fee award in the sum of £140 should not be made.

Signed

Date 2 November 2018

P.S. Before the 2 November 2018 I last saw this case file on 26 July 2018. I do not know how the unfortunate delay has been caused to promulgation which I regret.

Deputy Upper Tribunal Judge Davey