Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/04161/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 April 2016	**On 14 June 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MYKOLA KLYMUK
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Igor Komusanac of Igor & Co Solicitors
For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the Ukraine, date of birth 19 December 1981, appealed against the Respondent's decision of 23 March 2016 to refuse his application, dated 10 April 2015, for permanent residence as a family member of an EEA national. The appeal came before First-tier Tribunal Judge Anstis who, on 11 September 2017, dismissed his appeal under the Immigration (European Economic Area) Regulations 2006.

2. The Appellant had the burden of proof showing that on a balance of probabilities he met the relevant requirements of Regulation 15(1)(b) of the 2006 Regulations.

3. The issue as put before the Judge was simply this. Whether or not it was necessary for the Appellant to have five years' residence in the UK with a qualified person after issue of his residence card in order to acquire permanent residence or whether if there was five years in a relationship which was durable, was that sufficient to meet the requirements of the Regulation 15(1)(b)? The arguments are essentially put in different ways but along the lines that a proper construction of the 2006 Regulations demonstrated that there is no need for a person to accumulate the five years after the grant of a residence card.

4. The factual context is that the Appellant is a citizen of the Ukraine who came to the United Kingdom in June 2003 on a six month visit visa. He met his partner, Ligita Torburova, an EEA national exercising treaty rights, in the UK in September 2005 and in January 2006 they moved in together as a couple whence they have remained. The Appellant and his partner have two children from their long-term relationship, namely E K, date of birth [ ] and A K, date of birth [ ], both of whom were born in the UK and it is said the Appellant is their father.

5. In 2014 the Appellant applied for a residence card as an extended family member of his EU partner on the ground that he was in a durable relationship under Regulation 8(5) of the 2006 Regulations. Regulation 8(5) states:

> "A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national."

Under Regulation 7 which defines family members Regulation 7(3) states as follows:

> "Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence

> card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in Regulations..... 8(5) in relation to that EEA national and the permit certificate or card has not ceased to be valid or been revoked."

Under sub paragraph (4) it contemplates where the relevant EEA national is a student the extended family member should only be treated as a family member under other provisions which do not bear in this case.

6. It is said on behalf of the Appellant, given the time that he has been in the United Kingdom in the relationship, the five years includes the period of time before he was issued with a residence card in 2014. By contrast, the Respondent argued that it is only the counting of five years after the date of issue of the residence card in 2014 that counts. It is said that there is no direct authority upon the proper construction of the Regulations. I conclude that the only sensible reading of Regulation 15(1) of the 2006 Regulations contemplates the person as a family member of the EEA national to have been "in residence in the UK with the EEA national in accordance with these Regulations for a continuous period of five years...". It seems to me that that can only mean in the context of Regulation 7(3) that you count the period from when the EEA permit or residence card or certificate is issued and that the time together beforehand in accordance with these Regulations may well demonstrate the durable relationship and its length but they do not go to show that the person who has achieved that as a fact can demonstrate they are entitled after the five years from whenever the relationship started, to obtain a permit based on that five year period.

7. For these reasons therefore, since on behalf of the Appellant Mr Komusanac's skeleton argument seeks to derive from other reasoning unconnected with a direct interpretation of this Regulation that it is unconstrained by the grant of the family permit in 2014 and therefore the greater period has already been accumulated so as to entitle the Appellant to permanent right of residence.

8. Accordingly, the Judge when he dealt with this, properly considered the submissions and reached the conclusion that he was entitled to reach, namely that the five year period has to be accumulated before being eligible for permanent residence and that five year period is calculated from the date when the residence card was issued in 2014. Accordingly, I do not find there is any arguable error of law shown by the Judge's decision.

NOTICE OF DECISION

9. The appeal is dismissed.

ANONYMITY

10. No anonymity order was made nor is one required.

11. The Original Tribunal's decision stands.

Signed Date 5 June 2018

Deputy Upper Tribunal Judge Davey