



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

Appeal Number: EA/06513/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 5 February 2018**

**Decision & Reasons
Promulgated
On 23 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**CARLOS ELIAS VALDIVIEZO-BURGOS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr C U Ikegwuruka of Almond Legals

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal MacDonald who in a determination promulgated on 31 October 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse him a permanent residence card in accordance with Regulation 15 of the Immigration (EEA) Regulations 2006.
2. It was accepted that the appellant was in a durable relationship with Yolanda Luis Gutierrez, a Spanish national who claimed to have exercised Treaty rights in Britain for a period of five years or more. The couple have

a child who was born in 2010 who is also Spanish. The judge, who was not assisted by a Presenting Officer at the appeal heard evidence from the appellant and submissions made by Dr Ikegwuruka. There was before him a lengthy bundle of documents.

3. The judge considered as best he could the documentary evidence and concluded that that did not show that the sponsor had been exercising Treaty rights for the relevant 5 year period. He therefore dismissed the appeal. With regard to the appellant's private and family life he stated that that should be subject to a separate application.
4. The grounds of appeal asserted that there was sufficient evidence before the judge to show the sponsor had been exercising Treaty rights for the relevant period and furthermore argued that the judge's decision on the issue of the right of the appellant under Article 8 of the ECHR was flawed.
5. The documentary evidence was difficult to follow. I therefore asked Dr Ikegwuruka at the beginning of the hearing to take the bundle of documents and prepare a list of the evidence showing the sponsor's earnings for each year of the relevant five years, cross references to the document in the appellant's bundle. This he did.
6. Ms Pal, having seen the list conceded that there was sufficient evidence to show that the sponsor had been exercising Treaty rights for the relevant five year period and therefore accepted that I should set aside the decision and allow the appeal.
7. I have considerable sympathy for the judge as I note that not only was he not assisted by a Presenting Officer at the hearing but also that the documentary evidence was extremely difficult to follow. Having said that, I agree with Ms Pal that there was sufficient evidence before the judge to show that the sponsor was exercising Treaty rights. I therefore find that there was a material error of law in the determination of the First-tier Judge and I set aside his decision. For the same reason I now allow this appeal under the Immigration (EEA) Regulations 2006.

Decision.

This appeal is allowed.

8. No anonymity direction is made.

Signed
2018



Date: 18 February

Deputy Upper Tribunal Judge McGeachy