



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/12757/2016

THE IMMIGRATION ACTS

Heard at Field House
On 14th May 2018

Decision & Reasons Promulgated
On 29 May 2018

Before

Upper Tribunal Judge Chalkley

Between

ABDELKRIM YESLI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr K Alim, Counsel

For the Respondent:

Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Algeria born on 3rd September 1972 who made application to the respondent on 13th April 2016 for a permanent residence card. He arrived in the United Kingdom on 3rd November, 2008 with a six month visa valid from 21st September 2008 until 21st March 2009 and on 7th February 2011 he applied for an EEA residence card which was issued on 10th May 2011 until 10th May, 2016. The application of 13th April 2016 was refused by the respondent on 6th October. He appealed to the First Tier Tribunal who dismissed his appeal.

2. It was accepted by the respondent in the refusal letter that the appellant had submitted employment history in respect of his former wife for the years 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015, but had not provided sufficient evidence to show that his ex-wife was exercising treaty rights between 26th July 2015 to 28th August 2015. In order to succeed in his appeal, the appellant needed to demonstrate that his EEA national former was working or actively seeking work during that period.
3. This morning I pointed out to Mr Wilding that it appeared from page 174 of the appellant's bundle that the appellant's former wife was continually employed between 24th November 2014 and 13th November 2016. He agreed and accepted that the appeal should be allowed. I believe he was correct. The making of the decision by the First Tier Tribunal involved the making of a material error of law; the evidence had not been properly assessed. I set aside the earlier determination. I agree with Mr Wilding and allow the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date: 17 May 2018