



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

Appeal Number: EA/03538/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17 July 2019

Promulgated

On 24 July 2019

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**NURUDEEN GBENGA ADEGBOYEGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Parkin, instructed by Deton Solicitors

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who was born on 10 June 1978. He appeals against a decision which was issued by First-tier Tribunal Judge Ian Howard on 29 November 2018, allowing his appeal against a decision which was made by the respondent on 3 May 2018.

2. It is immediately apparent from the paragraph above that the circumstances of this case are rather unusual, in that the appellant has appealed against a decision to allow his appeal. I should explain in a little more detail how that situation came about.
3. The appellant was granted a Residence Card as the family member of an EEA national on 12 January 2011. On or about 22 February 2018, the appellant applied for a Permanent Residence Card. He stated that he had previously enjoyed a right to reside as the family member of an EEA national and that he had retained that right upon the termination of the marriage on 14 June 2016. It was submitted that the appellant had thereafter acquired a right to reside permanently in the United Kingdom, having satisfied the requirements of either regulation 15(1)(b) or regulation 15(1)(f) of the Immigration (EEA) Regulations 2016.
4. The respondent decided that application on 3 May 2018. Unfortunately, there were two problems with the decision. Firstly, the respondent considered the application as one for a Residence Card, rather than one for a Permanent Residence Card. Secondly, the respondent fell into the error considered in Barnett [2012] UKUT 142 (IAC); [2012] Imm AR 828 and Rehman [2019] UKUT 195 (IAC), in that he required evidence of the appellant's ex-wife's nationality, despite having already accepted in the Residence Card decision that she was an EEA national.
5. The appellant appealed and his appeal came before Judge Howard, sitting at Hatton Cross, on 20 November 2018. The appellant was represented by counsel, the respondent by an experienced Presenting Officer (Mr Williams). The judge recorded in his decision that Mr Williams had seen the original of the appellant's ex-wife's identity card and that he 'did not seek to advance any further reasons for contesting the appeal': [11]. The judge then allowed the appeal, finding that the appellant met 'the requirements of regulation 18(2)'.
6. That part of the regulations relates to the issuance of a Residence Card, however, and not to the issuance of a Permanent Residence Card. Having noted the basis upon which the appeal had been allowed, the respondent duly issued a Residence Card. The appellant was unsurprisingly dissatisfied with that outcome, and sought permission to appeal, contending that he should have received a Permanent Residence Card.
7. Permission was refused by the First-tier Tribunal but granted on renewal by Upper Tribunal Judge Kebede who, having noted the history of the matter, queried whether a hearing in the Upper Tribunal was really necessary. She issued directions to the respondent in order to resolve that query.

8. On 3 July 2019, the Upper Tribunal received a characteristically fair response to those directions from Mr Deller of the Specialist Appeals Team. I need not rehearse the contents of that letter. It suffices to state that he recognised the difficulty of the respondent's position but noted that there had been no reasoned consideration, whether in the respondent's decision or that of Judge Howard, of whether the appellant had actually acquired a right to reside permanently in the UK.
9. Before me, Ms Everett explained that she had reviewed the evidence which had been before Judge Howard and she had considered the file minute prepared by Mr Williams following the hearing. It was clear to her that Mr Williams' intention had been to advance no objection to the judge allowing the appeal on the basis that the appellant was entitled to Permanent Residence. Sadly, that had either not been understood or not been recorded by Judge Howard. The evidence in the Home Office file satisfied Ms Everett that the only proper outcome was that the appeal should have been allowed on that basis.
10. In the circumstances, I indicated that I did not need to trouble Mr Parkin and that the appeal would be allowed. I was satisfied that Judge Howard had erred in law in failing to resolve the appellant's entitlement to Permanent Residence and that I was in a position, as a result of Ms Everett's concession, simply to remake the decision on the appeal by allowing it on that basis.

Notice of Decision

The appeal is allowed. The decision of Judge Howard is set aside. I remake the decision on the appellant's appeal, and allow the appeal on the basis that he is entitled to Permanent Residence.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'MB', with a long horizontal stroke extending to the right.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)

12 September 2019