



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/05752/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12<sup>th</sup> August 2019**

**Decision**

**Promulgated**

**On 6<sup>th</sup> September 2019**

**&**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MS FLORENCE FOSU**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Akohene, of Afrifa and Partners Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana who first entered the United Kingdom on 30<sup>th</sup> June 2010 with an EEA family permit to join her husband Aaron Ark. After arrival she applied for and was issued with a residence card which was valid from 17<sup>th</sup> April 2012 until 17<sup>th</sup> April 2017. She and her husband divorced on 17<sup>th</sup> May 2016.
2. On 20<sup>th</sup> April 2018 she made an application for a permanent residence card as evidence she had retained the right of residence following divorce. This was considered by the respondent and refused in a decision dated 27<sup>th</sup> June 2018.

3. Such refusal was on the basis that:-

“You have not provided a valid national identity card or passport in the name of your EEA national sponsor”.

The decision went on to say:-

“No further consideration has been given to the other evidence that you have supplied in support of your application. If you are able to supply evidence that proves that you are the relative of the EEA national you may submit a further application.”

4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Ferguson on 12<sup>th</sup> March 2019.

5. Reliance was placed by the respondent and indeed by the Judge upon the EEA Regulations 2016. Regulation 21(5) provides that:-

“Where an application for documentation under this Part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national or extended family member of an EEA national, the application must be accompanied or joined by a valid national identity card or passport in the name of that EEA national.”

6. It was essentially on that basis that the appeal was dismissed.

7. Permission to appeal to the Upper Tribunal against that decision was granted having regard to the case of **Rehman (EEA Regulations 2016 - specified evidence) [2019] UKUT 000195 (IAC)**. That case considered the applicability of Regulation 21(5) and Regulation 42 of the EEA Regulations 2016.

8. In that case the respondent accepted that the appellant was married to an EEA national when he issued the previous residence card. As such the appellant had already provided the necessary proof to establish his right of residence. In the circumstances the appellant was not required to produce those documents again unless the genuineness of the marriage was in issue.

9. It was argued in the present appeal that there was no requirement upon the appellant to produce the identity documents, given that they had been previously presented and accepted by reason of the grant to her of the residence card in 2012. Such would seem to reflect the decision in **Rehman**.

10. Mr Kandola, on behalf of the respondent, indicated that in those circumstances the strict insistence upon the fresh presentation of identity and/or passport for the EEA national was not a strict requirement of the Regulations and accordingly the reasons for refusal letter was in error in making it so. He indicated that the substantive consideration of the other

documentation produced was not carried out because of that error. He accepted therefore that the decision as issued was not a lawful one in the light of the decision of **Asad Ur Rehman**. Thus the interpretation of Regulation 21(5) by the Judge at paragraph 8 and onwards in the determination was also in error. He indicated that the Secretary of State would need to look at the application and documentation again and make a lawful decision.

11. In all the circumstances, therefore, the decision of the First-tier Tribunal is set aside. To that extent the appeal before the Upper Tribunal is allowed.

No anonymity direction is made.



Signed

Date 29 August 2019

Upper Tribunal Judge King TD