



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

Appeal Number: EA/04204/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd February 2018**

**Decision & Reasons Promulgated
On 6th March 2018**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**SERGE OLIVIER GUIPIER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Robison promulgated on 26 June 2017, in which the Appellant's appeal against the decision to refuse his application for an EEA permanent Residence Card dated 6 April 2017 was dismissed.
2. The Appellant is a national of the Ivory Coast, born on 23 December 1973 who was issued with an EEA Residence Card on 4 October 2011 as the

spouse of Ms Halimata Cisse, an EEA national exercising treaty rights in the United Kingdom. He made an application on 11 October 2016 for a permanent Residence Card as a person who had retained rights of residence following divorce from his wife.

3. The Respondent refused the application on 26 June 2017 on the basis that she was not satisfied that the Appellant had provided sufficient evidence of (i) his former spouse exercising free movement rights in the United Kingdom at the time of their divorce; (ii) the marriage having lasted for at least three years and that the Appellant and his former spouse had resided in the United Kingdom for at least one year during their marriage; and (iii) the Appellant currently being in employment, self-employment or being economically self-sufficient as if he were an EEA national.
4. Judge Robison dismissed the appeal in a decision promulgated on 26 June 2017 on the basis that the couple had not cohabited in the United Kingdom for at least three years, nor that the marriage had lasted for three years such that the requirements of the Immigration (European Economic Area) Regulations 2016 (the “EEA Regulations”) had not been satisfied for a permanent Residence Card to be issued or the appeal to be allowed.

The appeal

5. The Appellant appeals on the ground that the First-tier Tribunal materially erred in law by confusing the requirements for cohabitation in the United Kingdom with the requirement that the marriage had lasted for at least three years, as set out in regulation 10(5) of the EEA Regulations and that on the facts sufficient evidence had been accepted which showed those requirements had been met.
6. Permission to appeal was granted by Judge Martin on all grounds on 19 December 2017.
7. The Appellant did not attend the appeal hearing, nor did any representative. Despite Aldgate Immigration having put themselves on record for the Appellant shortly prior to the hearing, they did not attend and when contacted denied they were instructed by this Appellant. In any event, the Home Officer Presenting Officer conceded on behalf of the Respondent that there was a material error of law in the application of the EEA Regulations in the decision of Judge Robison and I therefore considered it to be in the interests of justice to proceed with the error of law hearing even in the absence of the Appellant as no further oral submissions were needed from him or on his behalf to justly deal with the appeal.

Findings and reasons

8. Judge Robison, in paragraphs 4 to 6 of her decision, correctly identifies the relevant provisions of the EEA Regulations to the present appeal,

setting out the relevant provisions of regulation 10 and 15 of the same. In paragraph 7, she correctly identified that the focus of this appeal is on the question of whether the Appellant has proved that the marriage lasted at least three years, and that the couple resided in the United Kingdom for at least one year of marriage (other reasons for refusal having been conceded or sufficient evidence having been provided to satisfy them).

9. However, the Judge did not apply the provisions that he had set out correctly to the findings of fact he made. For example, in paragraph 10 there is reference to the issue of the couple having cohabited for at least three years (not the identified issues that the marriage had lasted for at least three years and the couple had resided in the United Kingdom for at least one year) and in paragraph 14 that the documents did not prove that the couple had cohabited for at least three years, or indeed that the marriage had lasted for at least three years. The latter finding being completely contrary to the accepted evidence that the couple married on 28 May 2009 and divorced on 31 July 2014, meaning that the marriage had in fact lasted more than five years. It is clear that the Judge confused the requirements of length of marriage and period of cohabitation in this appeal and because of that confusion, dismissed the appeal, despite factual findings that showed that the relevant requirements of the EEA Regulations were satisfied. That is a clear and material error of law meaning that it is necessary to set aside the decision of Judge Robison.
10. At the hearing, I indicated to the Home Officer Presenting Officer that there was sufficient information in the factual findings made in documents before the First-tier Tribunal to allow me to remake the decision on the papers in the Appellant's favour. In response, she submitted that the Respondent would normally look for greater evidence of the Appellant's circumstances than just a tenancy agreement, for example, she would expect to see utility bills or other correspondence linking a couple to a particular address; but accepted that that was not a specific requirements set out in the EEA Regulations but a matter of evidence to be determined by the Tribunal.
11. I am satisfied that although there may have been better or more comprehensive evidence from the Appellant as to cohabitation with his spouse, there was sufficient evidence before the First-tier Tribunal and therefore also before me, in the form of a joint tenancy agreement, that he was cohabiting with his wife at a property in Halley Road from 2 December 2010 to 5 January 2012. That is a period of more than one year of cohabitation in the United Kingdom during the period of the Appellants marriage. Together with the evidence which had also been accepted by the Respondent at the time of the First-tier Tribunal hearing that the marriage had lasted between 28 May 2019 and 31 July 2014 when the couple were divorced, satisfies the requirements of regulation 10(5)(d)(i) of the EEA Regulations. In the absence of any other outstanding issues raised by the Respondent as to satisfaction of the relevant requirements of the EEA Regulations, I find that the Appellant has established that he meets the requirements for a permanent Residence Card set out in

regulation 15(1)(b) in conjunction with regulation 10(5) and I therefore allow his appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision and remake it.

The Appellant's appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

No anonymity direction is made.

Signed
2018



Date 28th February

Upper Tribunal Judge Jackson