



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

Appeal Number: EA/11426/2016

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 16 October 2018**

**Decision & Reasons
Promulgated
On 6 November 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**ENOCH BOADI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Sobowale, instructed by Quality Solicitors (AZ Law)
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr Boadi against the decision of the First-tier Judge who, on 4 October 2017, dismissed his appeal against the respondent's refusal of his application for a residence card. I need not say very much in this judgment because it is common ground that the judge erred. She came to a number of positive findings which are helpfully summarised at paragraph 3 of the grounds of appeal concerning the validity of the marriage, the durable relationship and the marriage not being one of convenience. I am satisfied that the child is the appellant's child, and also

of crucial importance to today's hearing the judge found that the sponsor was exercising treaty rights at the date of decision and that she was doing so also at the date of hearing.

2. The judge dismissed the appeal on the basis that the sponsor had been unemployed for a period of nearly six months earlier on in 2017 and as a consequence did not accept she had been continuously exercising treaty rights or that she continues, he being a qualified person, to do so.
3. The judge having accepted that the sponsor was working and exercising treaty rights at the date of decision and also doing so at the date of hearing was sufficient for the appeal to be allowed. It is an application for a residence card only, not for permanent residence, and as a consequence I am satisfied that the judge erred as a matter of law in this case and in light of her other findings and in light of the error now corrected with regard to the exercise of treaty rights, it must follow that the appeal which was dismissed by the judge is now allowed.
4. No anonymity direction is made.



Signed

Date

06/11/2018

Upper Tribunal Judge Allen