

January 2022

Durable Partner and Domestic Violence under EU Law:

Durable Partners do not have the right to retain the right of residence upon the breakdown of relationships as a result of domestic violence

Singh (EEA: Extended Family Members) [2021] UKUT

Facts:

The appellant had been issued with a residence card confirming his right of residence as an extended family member of an EU national with whom he was in a durable relationship in January 2015. The relationship broke down owing to domestic violence in August 2017. In April 2019, the appellant applied for a residence card as confirmation of his right of residence as a person who had retained the right of residence under Regulation 10 of the EEA Regulations. The Secretary of State refused the application on the basis that, as he had not been married to his former partner, he could not meet the requirements of Regulation 10.

Main Issue:

Regulation 10 of the EEA Regulations is derived from Article 13 of Directive 2004/38. On the proper construction of Article 13, the appellant was entitled to retain his right of residence as he was the victim of domestic violence. Further, the failure to recognize this was unlawful discrimination.

Held:

The Immigration Tribunal rejected the appellant's appeal.

Reasons:

1 The duty to facilitate the entry of extended family members, who are in a durable relationship with an EU national under Article 3 (2), only arises if there is an existing relationship with the EU national. This is a continuing requirement. The durable relationship in this case ended in 2017, 20 months before the appellant applied for a residence card. Therefore, the appellant no longer comes within the ambit of article 3 (2) of the Directive.

2 The Directive 2004/38 draws a distinction between direct family members and extended family members who are in a durable relationship. Article 13 of the Directive proceeds on the basis of giving the right to retain residence to family members who are in a marriage or civil partnership, and whose relationships have come to an end as a result of domestic violence. The ambit of this is clearly defined. Had the European Union wished to extend the provision to those who were in durable relationships, they would have done so.

3 The appellant cannot derive assistance from the prohibitions against discrimination. The Directive clearly makes a distinction on the rights granted to non EEA nationals based on their marital status. This is deliberate. There is nothing under the Directive or EU law to suggest that the differential treatment of married and unmarried partners within the Directive is impermissible. The right under EU law is for applications to be facilitated. That is the limit of the right.

Comments:

This was an appeal involving Directive 2004/38 and the EEA Regulations. The EU Settlement Scheme is more generous. It allows for the retention of the right of residence by those recognized to be in a durable relationship before 31.12.2020, and whose relationships break down as a result of domestic violence.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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