



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

Appeal Number: IA/06529/2014

**Heard at Field House
On 13 February 2015**

**Determination Promulgated
On 6 March 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JULIUS ONYEKA EPHI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation

For the appellant: Mr N Owolabi, Solicitor

For the respondent: M E Yufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is the Secretary of State for the Home Department and the respondent is a citizen of Nigeria born on 20 May 1979. However for the sake of convenience I shall refer to Mr Ephi as “the appellant” and the Secretary of State as “the respondent” which are the designations they had before the First-tier Tribunal.
2. The appellant appealed against the decision of the respondent dated 16 January 2014 refusing his application for a permanent residence card pursuant to regulation 10 of the Immigration (European Economic Area) Regulations 2006 (the “EEA Regulations”). The appellant was issued with a residence card on 16 January 2009 as the family member of an EEA national. On 20 August 2013, the appellant applied for a residence card,

claiming to have retained the right of residence following his divorce from his EEA sponsor.

3. First-tier Tribunal Judge Somal allowed the appellant's appeal under the EEA Regulations in a determination promulgated on 11 July 2014. The respondent appealed against the decision and permission to appeal was granted by Designated Judge of the First-tier Tribunal Appleyard on 11 September 2014.

Findings of the First-Tier Tribunal

4. The First-tier Tribunal made the following findings which I state in summary. The appellant has provided an abundance of documentary evidence that points to the sponsor having exercising treaty rights at the date of the appellant's and her divorce on 12 April 2014. At that time the sponsor was a qualified person as a jobseeker and working as well. This is reflected the two letters which have been produced which show that her jobseeker's allowance was reduced to reflect the change in money given to her. Given the sponsor's employment history this can reasonably be taken as income from earnings as a worker for at least 12 months before the sponsor becoming a jobseeker.
5. The appellant was honest and explained that after his divorce, he had found it difficult to obtain information from his sponsor. Because the relationship ended, this is perhaps not surprising that she could not wish to hand over wage slips or anything that showed him how much she earned. Considering all the evidence in the round, his EEA national sponsor was exercising treaty rights at the point of divorce and at least from April 2011 beforehand. The appellant does have a retained right of residence following the divorce and therefore has discharged his burden of proof and meets the requirements of regulation 10 (5) of the 2006 regulations to be issued with a residence card.

Grounds of Appeal

6. The respondent in her grounds of appeal states the following which I summarise. The appellant has made a material misdirection in law on a material matter. At paragraph 7 of the determination the Judge finds that the EEA national was exercising treaty rights as at the date of divorce. Regulation 10 (5). The Judge however neglected to address the fact that the appellant has totally failed to show that he has been a worker, self-employed person, self-sufficient person since the date of the decree absolute of 12 April 2013. This failure amounts to an error such as the decision should be set aside.

The Hearing

7. At the hearing Mr Tufan said that he no longer relies on his grounds of appeal and concedes the appeal.

Decision

The Secretary of State's appeal is dismissed.

Signed by,

A Judge of the Upper Tribunal

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Mrs S Chana

This 6th day of March 2015