



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14230/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 August 2015**

**Determination Promulgated
On 26 August 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR FODIL GUERNAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Qureshi, Counsel
(instructed by Farani Javid Taylor Solicitors)
For the Respondent: Ms A Fijwala, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted on 28 May 2015 by Upper Tribunal McWilliam against the dismissal of his appeal seeking the issue of a permanent residence card under regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations") by First-tier Tribunal Judge Raymond in a determination promulgated on 25 November 2014. The Appellant is a national of Algeria, born on 27 December 1975. He had claimed that his marriage had lasted over three years of which at least one year had been in the United Kingdom.

2. Judge Raymond found that that the Appellant had not shown that his former spouse had been a qualified person within regulation 6 of the Immigration (European Economic Area) Regulations 2006 as at the date of the decree absolute pronounced on 8 July 2013.
3. Permission to appeal was granted by Judge McWilliam because she considered it arguable that the judge had taken irrelevant matters into account when reaching his decision.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, in the form of a letter dated 11 June 2015, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.
5. Ms Qureshi for the Appellant submitted that the judge had erred in his credibility findings, on which his decision under regulation 6 turned. There had been unchallenged evidence before the judge that the former wife had been working, specifically her P60 for the year ended 5 April 2013. That had been consistent with her employment history. The Appellant had no contact with his former wife and the judge should have taken a more generous approach to the evidence in those circumstances. The judge had made comments about the former spouse's earnings which suggested that he had misunderstood what was required to show compliance with regulation 6. The judge had taken into account irrelevant matters. The determination should be set aside and the judge's decision should be reversed.
6. Ms Fijwala for the Respondent (the Secretary of State) relied on the rule 24 notice. The determination contained no material error of law.
7. At the conclusion of submissions the tribunal stated it found that there was no material error of law by First-tier Tribunal Judge Raymond in his determination. The tribunal reserved its decision which now follows
8. It seems to the tribunal that the judge's decision was the only one properly open to him on the evidence. There was in fact no evidence that the former wife was even in the United Kingdom at the date of the decree absolute. The latest evidence that she had been working in the United Kingdom was her P60 dated 5 April 2013, which was obviously some three months prior to the decree absolute. The Appellant had elected to proceed by way of submissions only and was not called. The judge explained why he found much of the evidence placed before him to be unsatisfactory, for example, that the Appellant had not said when he actually lost contact with his former wife: see [34] of the determination. In such circumstances, it would not have been possible for the judge to have inferred that it was more likely than not that she was still working in July 2013. The comments the judge made at [36] are simply further remarks about the poor quality of the evidence, which he had earlier analysed in detail. In

brief, the Appellant had by no means discharged the burden of proof on him. The judge's conclusions are properly reasoned and are sustainable.

9. The tribunal finds that there was no material error of law in the determination. The Appellant's onwards appeal fails.

DECISION

There was no material error of law in the First-tier Tribunal's determination, which stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell