



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

Appeal Number: IA/46222/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 12<sup>th</sup> June 2015**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**MARTINS NNAMDI IJENDU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Adjarho, legal representative of Chancery CS Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 27<sup>th</sup> April 2015 Judge of the First-tier Tribunal Cruthers gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Place in which she dismissed the appeal against the decision of the respondent to refuse to

grant a permanent residence card in accordance with the provisions of the Immigration (European Economic Area) Regulations 2006 (as amended).

2. When granting permission Judge Cruthers thought it arguable that the judge had failed to take full account of evidence about the exercise of treaty rights by the appellant and his former wife. In particular he thought that it was incorrect for the judge to state that the former wife's P60 for the year ending 5<sup>th</sup> April 2014 was the latest document to show evidence of her working.
3. In the grounds of application it was also alleged that the judge's conclusions were against the weight of evidence showing that the appellant had been continuously working since the date of divorce on 28<sup>th</sup> April 2014 when there were 22 wage slips covering the period from April 2014 to January 2015 and not two as stated by the judge.
4. At the hearing before me Mr McVeety submitted that the grounds appeared to refer to additional evidence which had been submitted by representatives on 17<sup>th</sup> March 2015 for the purpose of the application for leave to appeal. The bundle for the hearing which took place on 10<sup>th</sup> February 2015 was that submitted by representatives on 9<sup>th</sup> February 2015. The latter does not appear to include the claimed 22 payslips referred to in the application although, even if it had included such payslips, that would not get over the problem that it had not been shown that the appellant's former wife was exercising treaty rights at the date of the divorce in April 2014. Without that information the appeal had to be dismissed, in any event.
5. Whilst Mr Adjarho conceded that the problems in relation to the evidence showing the former wife's employment had not been resolved, he thought that the bundle before the judge had included the additional wage slips covering the period from April 2014 to beyond the date of the P60s for the appellant in that year.
6. After considering the matter for a few moments I indicated that I was not satisfied that the decision showed a material error on a point of law and should stand. I now give my reasons for reaching that conclusion.
7. Whilst it is possible that the judge had before her additional payslips relating to employment for the appellant in addition to the two payslips she identified dated September 2014 and January 2015, that does not affect the judge's conclusions about the exercise of treaty rights for the appellant's former wife in paragraphs 10 and 11 of the decision. As the judge points out, there is a gap in the evidence of at least 23 days between the P60 for the tax year to 5<sup>th</sup> April 2014 for the former wife and the date of divorce and, additionally, the evidence of her exercising treaty rights between 2010 and 2014 was limited especially in relation to her self-employment business. The judge was entitled to conclude, in those circumstances, that it had not been shown that the appellant's former wife was a qualified person at the time of divorce as required by paragraph 10 (5)(a) of the 2006 Regulations. On this basis the judge was entitled to dismiss the appeal.

**Notice of Decision**

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

**Anonymity**

Anonymity was not granted by the First-tier tribunal or requester in the Upper Tribunal nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt