



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

Appeal Number: EA/02133/2017

THE IMMIGRATION ACTS

Heard at Field House

On 9 November 2018

**Decision & Reasons
Promulgated**

On 17 December 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS ISWAREE HUNKAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah (instructed by JF Law Solicitors)

For the Respondent: Ms L Kenny (Senior Home Office Presenting Officer)

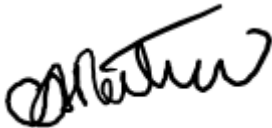
DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission granted by the First-tier Tribunal. The appeal was heard by Judge Oliver at Hatton Cross on 20th April 2018 and refused in a Decision and Reasons promulgated on 20th June 2018.
2. The appeal was by a Mauritian national who had applied for permanent residence on the basis of her retained rights, having married and subsequently divorced a French national.

3. The Judge identified, correctly, that the Appellant had to show, amongst other things, that her former husband was exercising Treaty rights at the date of the termination of the marriage. However, the Judge took that date to be the date of the decree absolute. We now know that that is wrong and the applicable date is the date of the initiation of the divorce proceedings (Bagazieva [2018] EWCA Civ 1088).
4. Therefore, the whole basis upon which the Judge approached the evidence was in error, although the Judge is not to be criticised for that as he heard the appeal prior to the Court of Appeal deciding Bagazieva. It is clearly material because that was the fundamental issue to be decided. On that basis the Decision and Reasons is set aside in its entirety.
5. The evidence that has to be shown by the Appellant is somewhat different than when the original bundle was filed and for that reason it is appropriate for the matter to be remitted to the First-tier Tribunal for a full rehearing on the issues when no doubt the Appellant will lodge additional evidence.
6. No anonymity direction was made in the First-tier Tribunal. and I see no reason for making one now.

Decision

The appeal to the Upper Tribunal is allowed to the extent that the Decision and Reasons is set aside and the matter remitted to the First-tier Tribunal for rehearing.



Signed
2018

Date 21st November

Upper Tribunal Judge Martin