



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

Appeal Number: EA/02762/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 March 2018**

**Decision & Reasons Promulgated
On 12 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

NASIRA NASIR

(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:
For the Respondent:

Mr F Khan, Counsel
Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal did not make an anonymity direction and I do not consider that the Appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

Background

2. The Appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Martins) dismissing her appeal against the decision of the Secretary of State to refuse to issue her with a permanent residence card, as confirmation of a retained right to reside in the United Kingdom (UK), as the former spouse of an EEA national.
3. The Appellant is a citizen of Pakistan. She last entered the UK on 23 January 2008 with entry clearance conferring leave to enter as the spouse of an EEA national. The Appellant married an EEA national on 13 July 2007. The marriage ended in divorce on 1 April 2015.
4. On 11 May 2015 the Appellant applied for a residence card as confirmation of her right to reside in the UK on a permanent basis under the Immigration (EEA) Regulations 2006.
5. On 6 November 2015 the Respondent issued a Notice of Immigration Decision refusing the application under Regulation 15 with reference to regulation 10(5) and 10(6). This was because there was a gap in the former spouse's employment records between 2009 and 2014, and the Appellant had not been exercising treaty rights since the date of divorce.

The Decision of the First-tier Tribunal

6. The Appellant's appeal was allocated to Judge Martins in the First-tier Tribunal on 10 January 2017. Both parties had submitted evidence in support of the appeal and Judge Martins heard evidence from the Appellant. The Appellant claimed inter alia that since divorce she was working on a self-employed basis as a property consultant. It is fair to say that Judge Martins was not impressed by the Appellant's evidence of her employment. Whilst she acknowledged that there was "*some documentary evidence*" of the Appellant's work, Judge Martins stated that there was "*aspects of her evidence which detract from her credibility*" and that her evidence left "*a very confused picture*". Judge Martins was thus not satisfied that "*the whole truth is being told*". Judge Martins further noted that in respect of the Appellant's former EEA spouse, that there was "*quite a significant period of time, for which there is no independent evidence.*" Judge Martins concluded that she could not be satisfied that the Appellant's former spouse had been exercising treaty rights for a continuous period of five years or, that the Appellant had been employed since the date of divorce as a property consultant. Judge Martins thus found that the Appellant had not established that she had retained a right of residence and nor was she entitled to permanent residence. Accordingly, the appeal was dismissed.

The Application for Permission to Appeal

7. The Appellant applied for permission to appeal on the grounds that there was documentary evidence before Judge Martins which showed that the Appellant's former spouse was exercising treaty rights at the time of divorce and, that the

Appellant was working at that time and thereafter, which demonstrated her entitlement to a retained right of residence upon divorce.

The Grant of Permission to Appeal

8. On 22 January 2018 Upper Tribunal Judge Kebede granted permission to appeal on the basis that it was arguable that Judge Martins failed to consider the documentary evidence and failed to give adequate reasons for concluding that it did not establish the Appellant's entitlement.

The Hearing in the Upper Tribunal

9. At the hearing before me, Mr Khan conceded that the Appellant had not established her entitlement to permanent residence as there was a gap in the evidence of the former's spouse's exercise of treaty rights from 2009 to 2014. Nonetheless, he referred to documentary evidence before Judge Martins that he submitted was sufficient to establish that the Appellant had retained a right of residence following divorce pursuant to regulation 10(5) that had not been considered. Mr Duffy submitted that the grounds merely sought to disagree with the findings made.

Reasons for Finding an Error of Law

10. I am satisfied that the First-tier Tribunal erred.
11. While Judge Martins criticisms of the Appellant's oral evidence were open to her, that evidence and the issues to be addressed ought to have been examined within the context of the documentary evidence. Judge Martins consideration of that evidence went as far as to acknowledge that there was "*some documentary evidence*" of the Appellant's work but that consideration in my judgement was inadequate. There was documentary evidence before Judge Martins supportive of the Appellant's claim that she had retained a right of residence and whilst I acknowledge its limitations, adequate consideration was not given to that evidence and no reasons are given as to why it did not assist towards establishing the Appellant's entitlement. I cannot exclude the possibility that the evidence may have led to a different conclusion had it been adequately considered. In the circumstances, I am not satisfied that Judge Martins assessment of the Appellant's evidence can stand.
12. I thus set aside the decision.
13. The parties agreed that I could proceed to remake the Decision on the evidence, a course which I indicated I would consider, but considering the concerns raised by the Appellant's evidence I have decided that it would not be appropriate to do so. The appeal in my view requires to be reheard and a decision remade considering all the evidence including the oral evidence of the Appellant and the documentary evidence relied on, the originals of which I have not seen. The appropriate forum in which to do so is the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal contained an error of law. Accordingly, the decision is set aside. The appeal is remitted to the First-tier Tribunal to be reheard afresh by a judge other than Judge Martins. No findings are preserved.

Signed

Date 29 March 2018

Deputy Upper Tribunal Judge Bagral