Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/10846/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 September 2018	**On 11 November 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MOHD ASHFAQUE SAIYED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa, Counsel instructed by Apex Legal Services
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of India, has permission to challenge the decision of Judge Keith of the First-tier Tribunal (FtT) sent on 28 March 2018 dismissing his appeal against the decision made by the respondent on 16 August 2016 to refuse to grant a permanent residence card as the spouse of an EEA national. The appellant claimed he was entitled to such a card because he had a retained right of residence. The appellant had entered into an arrangement with his EEA partner on 26 November 2010 and it was dissolved in a Decree Absolute of 6 October 2013.

2. The appellant's grounds levelled three main criticisms of the judge's decision:

(i) that he wrongly considered the date of termination of the marriage rather than the date that divorce proceedings were commenced;

(ii) that the just neglected that the respondent could have contacted the HMRC to establish the actual position as regards the appellant's ex-wife's exercise of Treaty rights; and

(iii) that the judge failed to consider that the appellant's relationship had lasted more than three years as the couple applied for permission from the Home Office to register their marriage and they had had an "Islamic marriage" which should have been seen as a relationship akin to marriage.

3. In relation to ground (iii,) Mr Mustafa sought to rely on the case of **Akhter v Khan** (Rev 4) [2018] EWFC 54, 31 July 2018 finding that an Islamic marriage was a void marriage.

4. It is convenient to deal first with ground (ii). The respondent was not under any legal obligation to contact the HMRC to ascertain details of the appellant's ex-wife's working history, although there is power to make such contact conferred on the respondent by S.36 of the ANA2006. Mr Mustafa sought in his skeleton argument to rely on the case of **Amos v SSHD** [2011] EWCA Civ 55. In that case the Court of Appeal noted that it was within the power of the Tribunal to direct the respondent to contact HMRC to obtain particulars relating to the employment history of an ex-spouse. However, in this case the appellant's representatives made no application for an **Amos** direction. Furthermore, although the appellant did state he had met with difficulties in obtaining his ex-wife's employment particulars, he nowhere demonstrated that he had taken reasonable steps to obtain them. The judge records at paragraph 12 that the appellant was asked about his efforts to get documents from his estranged wife and then at paragraph 9 makes a specific finding that the appellant had not demonstrated he had made a reasonable effort to obtain such details. Such findings were within the range of reasonable responses. In such circumstances there was no error in the judge failing to consider or to make an **Amos** direction.

5. I do not consider that I need address grounds (i) and (iii) since, even if I considered them made out, they do not suffice to establish that the judge erred in dismissing the appellant's appeal. To succeed in his appeal the appellant would have had to establish that his *ex-wife* was working for at least three years prior to the date of divorce (on 6 October 2013).

6. The judge accepted that the *appellan*t had been working since the date of their divorce (paragraph 20). However, in order to be able to count his own period of employment towards his entitlement to permanent residence the appellant was required to show that his ex-wife was working for a sufficient period pre-divorce to constitute (by aggregation) five years. Even leaving aside the requirements of Regulation 10(5)(d)(i), the minimum period during which the appellant was required to show his wife

was working was in the order of just over two years (assuming the appellant was entitled to count towards the five years the entirety of his period of working between date of divorce and the date of decision i.e. between 3 October 2013, and 16 August 2016) that still left some two years of employment on the part of his ex-wife which would have had to take place immediately prior to the date of divorce. Yet the only evidence produced by the appellant regarding his ex-wife's employment was his own assertions which the judge at paragraph 9 expressly found unreliable. Whether the above timelines are adjusted to date from before the date of commencement of divorce proceedings rather than the date of divorce (see **Baigazieva v SSHD** [2018] EWCA Civ 1088), the same evidential obstacles apply.

7. Hence, even if the appellant could sometimes surmount the requirement of Regulation 10(5)(d)(i) of showing his marriage lasted three years, that would not assist him establishing that he had acquired permanent residence under Regulation 10(5)(a).

8. For the above reasons, I conclude that the judge did not materially err in law in concluding that the appellant could not meet all the requirements of Regulation 10. Accordingly the decision of the judge must stand.

No anonymity direction is made.

Signed: Date: 4 October 2018

H H Storey