Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/06634/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 12 August 2019	**On 27 August 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MR YASIR HAMEED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Malik, acting on behalf of Resolve Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') sent on 18 December 2018, dismissing his appeal on EEA grounds. In summary, the FTT had one issue to determine and that is whether or not the appellant's former spouse was exercising treaty rights at the time that divorce proceedings were initiated in October 2017.

Background

2. The appellant is a citizen of Pakistan. His ex-wife is of Pakistani background but was born in the Netherlands and is a citizen of that country. She is therefore an EEA citizen but also holds Pakistani citizenship by descent. The appellant has claimed that they lived together until his wife left him in around August 2016, albeit that he did not initiate divorce proceedings until October 2017. The appellant claimed that up until the point his wife left him she had been living and working in around Burnley and/or Nelson, but after that he was unaware as to whether she was working although he believed that she was working from various sources.

Representation

3. The appellant has been represented by Mr Malik who has described himself as an immigration consultant working on behalf of Resolve Solicitors. The notice that falls to be completed as a matter of course before the Tribunal, that is the notice under section 84 of the Immigration and Asylum Act 1999, was unclear. Multiple boxes were ticked. I therefore asked Mr Malik to clarify the basis upon which he was providing immigration services. He was given an opportunity to reflect and to speak with Resolve Solicitors. After some time he corrected the form to tick the box that he was acting on behalf of or under the supervision of a person who falls within the box ticked above. He also provided by way of email a letter from Resolve Solicitors dated 12 August 2019 which says this:

> "We write further to above matter and confirm that Mr Rafiq Malik is working with us as a immigration consultant and is authorised to appear on our behalf with the Tribunal. Please don't hesitate to contact us if any further information is required."

4. Having been provided with that letter and having no reason to go behind the assertion within the letter that Mr Malik was acting on behalf of a solicitor at Resolve Solicitors, namely a Habat Ranjha, I agreed for him to continue to represent the appellant in these proceedings. I simply note on this occasion it is not altogether clear the extent to which Mr Malik is being supervised by any solicitor at Resolve Solicitors and the extent to which he has been acting on behalf of those solicitors, but given the contents of the letter and for the purposes of this hearing, I was content for him to proceed as a representative.

FTT decision

5. In a carefully drafted and comprehensive decision, FTT Judge Tully explained the manner in which the hearing came before her: it was listed on the float list and as such did not start until 2.25pm. Judge Tully noted that at the beginning of the hearing the appellant's

representative, Mr Malik, confirmed that he was ready to proceed. It was only after the evidence had been completed and toward the end of Mr Malik's submissions that he indicated that he wished for there to be an Amos direction. Judge Tully refused to consider the application at that late stage and went on to determine the appeal on its substantive merits. Judge Tully directed herself to the relevant law as set out in Amos v SSHD [2011] EWCA Civ 552 and in Baigazieva v SSHD [2018] EWCA Civ 1088.

6. Judge Tully correctly accepted that the relevant date in dispute as to whether or not the former spouse was exercising treaty rights was the date of the initiation of the divorce proceedings, that is October 2017. She then proceeded to give reasons as to why in her judgment, having considered oral evidence as well as documentary evidence, she was not satisfied that the ex-spouse was exercising treaty rights at that stage. She referred specifically to the evidence provided by Mr Rizwan Hamid, the letter from Star Print, the oral evidence as well as the other more general documentary evidence. Judge Tully reminded herself that the burden of proof rested upon the appellant and did not accept, given the paucity of the evidence before her, that he had established that his former wife was exercising treaty rights as at the date of the initiation of the divorce. She also queried whether there was sufficient evidence as to the appellant's own work history, which she considered to be confusing and vague. Judge Tully however concluded that given her findings regarding the ex-wife's work history, it was immaterial to establish the appellant's work history.

Hearing

7. At the hearing Mr Malik relied upon the three grounds of appeal in relation to which permission had been granted. The first and third grounds are linked. They submit that the FTT erred in law in failing to accede to the request for an Amos direction as well as failing to deal with the application that the Secretary of State should have provided the evidence to support their assertion that inter-agency checks confirmed that the ex-spouse had no record as being either employed or self-employed after September 2016 in the UK. The second ground submitted that the FTT erred in refusing to accept as credible the evidence provided by Star Print regarding the ex-spouse's claimed employment, for the period 1 September 2017 to 10 January 2018.

8. Judge O'Callaghan granted permission to appeal in a decision dated 1 March 2019 and made the following observation:

> "I remind myself that the hurdle as to arguable is low. It is arguable that contrary to the position stated at 4 the appellant had sought an order at the hearing. See section B of the hearing information form for float cases. It is therefore arguable that by not considering the application the judge did not seek to establish whether the appellant had made a reasonable effort to obtain the

> required details as at the date of hearing. The Upper Tribunal will expect evidence identifying such efforts to be filed and served prior to the hearing."

9. Mrs Pettersen submitted that the grounds of appeal had not been made out and that the FTT had given adequate reasons for taking the approach that it did. Mrs Pettersen also reminded the Tribunal that if an Amos direction continued to be sought in this case there was nothing to prevent the appellant from making a fresh EEA application during the course of which an Amos application could be made.

Error of law discussion

Grounds 1 and 3

10. As I have already indicated these grounds are linked and can be taken together. I deal firstly with the Amos application point. It is helpful to summarise the procedural history regarding the Amos application. In a letter sent to the FTT and received on 15 November 2018, Resolve Solicitors submitted that it would be in the interests of justice and in order to narrow the issues, for the Tribunal to issue directions to the Home Office in order to obtain the ex-spouse's employment history from the HMRC for the three years before the appellant initiated divorce proceedings. That application was refused by a Tribunal caseworker on 19 November 2018. The Tribunal caseworker observed this:

> "The appellant has not evidenced that reasonable steps have been taken to obtain his former spouse's employment history."

11. The matter remained in the list for 4 December 2018. Mr Malik completed a 'hearing information form for float cases' on the morning of the hearing. This contains the following at section B:

> "The Home Office have not provided the documents they received from HMRC or WP or national insurance agency on which they relied to send the refusal letter."

There is no reference within the 'hearing information form for float cases' to a renewed request for the Tribunal to issue an Amos direction. The only matter that is referred to within that 'hearing information form for float cases' is a request for the inter-agency evidence referred to by the respondent in his decision letter.

12. It follows that when Judge Tully said that there was no application for an Amos direction until the very end of Mr Malik's submissions she was correct to summarise the history in that manner. Whilst an application had been made on the papers, it was rejected. There was no renewal of that application either before 4 December 2018 or within the hearing information form for float cases or at the beginning of the hearing. It is to be expected that where an appellant or his representative seeks a direction from the Tribunal that has previously

been rejected, that that representative should make a renewed application. That was not done until it was far too late to do so and in rejecting the application for a direction on this basis, the FTT has not made any error of law.

13. I now turn to the matter relating to the request for inter-agency checks. The decision letter in this case says this in relation to the evidence provided as to the ex-spouse's employment:

> "Due to concerns over the quality of the documents provided this department conducted inter-agency checks in order to gain an accurate record of your sponsor's employment or self-employment in the UK. Our checks revealed that your sponsor has had no record as an employed or self-employed person in the UK after September 2016 suggesting she may not have even been resident in the UK during this period. As a result there is no evidence of your sponsor exercising treaty rights in the UK at the time of your divorce in April 2018."

14. The FTT said this in relation to inter-agency checks:

> "24. The respondent says in the decision that he has made enquiries with HMRC and there is no record that she has made tax or national insurance contributions after September 2016. It is not helpful that the respondent did not produce evidence of the checks that they received from HMRC and the respondent's representative could provide no explanation for the omission of this evidence in the bundle.
>
> 25. However I remind myself to the burden of proof is on the appellant. I do not accept given the paucity of evidence before me that he has established that his former wife was exercising treaty rights at the date of divorce."

15. It is clear that the FTT was aware that the appellant was concerned at the absence of evidence to support the contention that the ex-wife had not been working at the time of the initiation of the divorce. However this must be seen in context. This is not a case where the respondent was relying about specific information, that provided figures or referred to dates or numbers. The respondent in this case was relying upon an absence of evidence. The absence of evidence was made clear in the decision letter well in advance of the hearing and the appellant was therefore under notice that that evidence was not forthcoming from the inter-agency check. The appellant as a result of that sought to obtain his own evidence regarding his ex-spouse's employment. That evidence was varied. It included evidence from a live witness, Mr Hamid, who gave evidence that he believed that the ex-wife was working. It also included evidence in the form of a letter from Star Print, oral evidence from the appellant and his brother and other documentary evidence. The FTT considered all of that evidence in considerable detail and was entitled to reject it for the reasons provided - see [18] to [25] of the FTT's decision. It

follows that in concluding that there was a paucity of evidence such that the appellant had not displaced the burden of proof, the FTT has acted lawfully and in accordance with the evidence available to it.

Ground 2

16. This turns on the letter provided by Star Print dated 20 November 2018. This purports to confirm that the ex-spouse worked at Star Print, gave her address, date of birth and hours of work. The FTT considered this evidence very carefully indeed at [20] of its decision. It observed that the document is of poor quality, the signature is not an original signature, the writer of the letter did not attend to give oral evidence and the address within the letter appeared to be inconsistent with the chronology provided by the appellant.

17. Given that summary as set out in more detail at [20] of the decision the FTT was entitled to attach no weight to the letter. In all the circumstances, the FTT has not acted unlawfully in doing so.

Conclusion

18. The three grounds of appeal are not made out. The FTT has reached a lawful decision on the evidence before it. The FTT has not acted unfairly bearing in mind the particular procedural history of the case and the manner in which the applications were made.

Decision

19. The FTT decision does not contain an error of law and I do not set it aside.

Signed: *UTJ Plimmer* Date: 21 August 2019

Upper Tribunal Judge Plimmer