



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

**Appeal Number: EA/08050/2016
EA/02365/2017**

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2019**

**Decision & Reasons Promulgated
On 19 March 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SAAD BAMOUTH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Al-Rashid of counsel, instructed by David A. Grand

For the Respondents: Ms A. Everett, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent is a national of Morocco. On 5 May 2011 he married a Spanish national in Denmark. He entered the United Kingdom on 1 March 2014 with a family permit as the husband of an EEA national and applied for a residence card, as the husband of an EEA national exercising a Treaty rights in the United Kingdom, on 14 July 2014. His application

was refused on 13 September 2014 and he was given notice of his liability to removal on 26 November 2015.

2. A decree absolute confirming that the Appellant and his wife had divorced each other was issued by the Family Court in Bury St. Edmunds on 16 March 2016.
3. The Appellant applied for a residence card as a person who was entitled to a retained right of residence as the former husband of an EEA national but his application was refused on 4 July 2016. He subsequently appealed against this decision and the appeal was listed as EA/08050/2016. On 11 August 2016 the Appellant made a further application for a residence card as a person who was entitled to a retained right of residence as the former husband of an EEA national. This application was refused on 17 February 2017 and he appealed against this decision on 3 March 2017. This appeal was allocated the appeal number EA/02365/2017.
4. Both appeals came before First-Tier Tribunal Judge Geraint Jones Q.C., who dismissed them in decisions promulgated on 4 July 2018. The Appellant sought permission to appeal and First-Tier Tribunal Judge Kelly refused him permission to appeal on 20 September 2018. However, Dr. Storey, a Judge of the Upper Tribunal granted him permission to appeal on 6 December 2018.
5. I found that there was an error of law in First-tier Tribunal Judge Geraint Jones Q.C.'s decisions on 2 January 2019 and set his decisions aside, I also reserved the re-hearing to myself and gave directions to the Respondent. These directions were not initially complied with and, therefore, I made further similar directions on 7 March 2019. On 13 March 2019 the Respondent wrote to the Appellant stating that he did not intend to amend the refusal letters, dated 4 July 2016 and 17 February 2017, and rely on any assertion that the Appellant's marriage had been one of convenience.
6. The Appellant had provided a second witness statement, dated 13 March 2018 and a letter from his ex-wife, dated 15 December 2008, but I did not need to take these into account as the Respondent was no longer asserting that his marriage was one of convenience

RE-HEARING DECISION

7. Regulation 10 of the Immigration (European Economic Area) Regulations 2006 states that:
- (5) A person satisfies the conditions in this paragraph if-
- (a) he ceased to be a family member of a qualified person...on the termination of the marriage...of that person;
 - (b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
 - (c) he satisfies the condition in paragraph (6); and
 - (d) either-
 - (i) prior to the initiation of the proceedings for the termination of the marriage...the marriage...had lasted for at least three years and the parties to the marriage...had resided in the United Kingdom for at least one year during its duration;
- (6) The condition in this paragraph is that the person –
- (a) is not an EEA national but would, if he were an EEA national, be a worker...”
8. The Appellant accepted that he and his wife separated on 14 April 2014 shortly after his arrival in the United Kingdom. However, it is his case that they both continued to live here until their divorce on 16 March 2016.
9. Regulation 4 of the Immigration (Notices) Regulations 2013 states that:
- “(1) Subject to regulation 6, the decision-maker must give written notice to a person of any decision taken in respect of...any EEA decision taken in respect of him which is appealable”.
10. In particular, the Notice stated that “the appeal must be brought on the ground that the decision breaches your rights under the EU treaties in relation to entry to, or residence in, the United Kingdom”.

11. Regulation 5 states that:

“(1) A notice given under regulation 4(1)-

(a) is to include or be accompanied by a statement of the reasons for the decision to which it relates.”

12. The Respondent gave such notice of his decisions on 4 July 2016 and 17 February 2017 and these notices were accompanied by Reasons for Refusal Letters. He accepted that the Appellant had been married to an EEA national for at least three years but did not accept that the Appellant’s wife had resided in the United Kingdom for at least one year during their marriage. In addition, the Respondent did not accept that the Appellant’s wife had been exercising a Treaty right in the United Kingdom at the time of their divorce. (He did accept that the Applicant had been a “worker” in the United Kingdom since the time of his divorce.)

13. There was no assertion that the Appellant’s marriage had been one of convenience.

14. In *MH (Respondent’s bundle: documents not provided) Pakistan* [2010] UKUT 168 (IAC) the Upper Tribunal found that:

“Rule 13 of the First Tier Tribunal Rules requires an unpublished document to be supplied to the Tribunal if it is mentioned in the Notice of, or Reasons for Refusal or if the Respondent relies on it. Because the Notice of, or Reasons for Refusal form the statement of the Respondent’s case, however, the Tribunal is likely to assume that a document mentioned in either, but not supplied to the Tribunal, is no longer relied on”

15. In paragraph 13 of its decision the Upper Tribunal found that:

“The requirements of rule 13 are mandatory. Their intention is clear: it is to enable the Appellant to know the case he has to meet, and the Tribunal to have the material upon which the case can be judged...the Tribunal is entitled to conclude that a document not furnished under rule 13 is not a document upon which the Respondent relies; and that if there is reference to it in the Notice of, or Reasons for Refusal, the Tribunal is entitled to conclude that that reference no longer forms part of the Respondent’s case”.

16. The Respondent no longer relies on any assertion that the Appellant's marriage was one of convenience.
17. The only remaining live issues were whether both the Appellant and his ex-wife had lived in the United Kingdom for at least one year prior to their divorce and whether she had been exercising a Treaty right at the appropriate time.
18. The witness statement of Gavin Robert Williams, dated 5 March 2018, referred to disclosure from HMRC which indicated that the Appellant's ex-wife had been exercising Treaty rights as a self-employed or self-sufficient person between 2014 and 2016. The Home Office Presenting Officer accepted that this was the case.
19. The statement by Gavin Williams and the disclosure provided by HMRC also confirmed that the Appellant's ex-wife had been present in the United Kingdom between 2014 and 2016, as a self-employed or self-sufficient person for more than a year. In his reasons for refusal the Respondent had previously accepted that the tenancy agreements and bank statements had shown that Appellant had been in the United Kingdom for at least one year prior to their divorce.
20. Therefore, the Appellant had submitted the necessary evidence to show that he had retained a right of residence on his divorce.

Decision

- (1) The appeal is allowed.

Nadine Finch

Signed

Date 18 March 2019

Upper Tribunal Judge Finch