



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

Appeal Number: EA/09205/2017

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 08 February 2019**

**Decision & Reasons Promulgated  
On: 05 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**TETTEH AGBLEZE**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Lanlehin, instructed by JF Law Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Ghana born on 10 December 1981, appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with a permanent residence card under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"), on the basis of having retained a right of residence as the former spouse of an EEA national.

2. The respondent, in his decision of 20 August 2017 refusing the application, accepted that the appellant's marriage had lasted over three years and that he and his ex-spouse had lived together whilst married for over a year in the UK,

accepted that the appellant's ex-spouse was exercising treaty rights at the time of the divorce and accepted that the appellant had been in employment since before the date of the divorce. However the respondent noted that the appellant had not provided evidence of his EEA sponsor's EEA ID as required and therefore did not accept that he had a retained right of residence following his divorce.

3. The appellant appealed that decision and his appeal was heard in the First-tier Tribunal by Judge Courtney on 17 August 2018 and dismissed in a decision promulgated on 23 August 2018. Judge Courtney accepted that the identification requirements were met and that the appellant had retained a right of residence on divorce. However the judge did not accept that the appellant had shown that he had acquired a permanent right of residence. She noted that there had been a breach in the continuity of the sponsor's employment prior to 2 April 2012 and therefore considered the five-year period from 2 April 2012 until 17 August 2018, the date of the hearing. The judge noted that the documentation referred to in the covering letter to the appellant's application had not been included in the respondent's bundle and that there was a significant gap in the evidence. There was a gap in the evidence for the appellant's ex-spouse from April 2010 until April 2013. The evidence for the appellant's employment related to the period up until 7 April 2017. On that basis the judge found that the appellant did not meet the requirements of regulation 15(1)(f) of the EEA Regulations and dismissed the appeal.

4. Permission to appeal that decision was sought, and granted, on the basis that the judge ought to have considered whether the appellant was entitled to a residence card on the accepted basis that he had a retained right of residence.

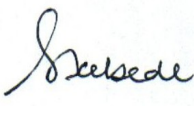
5. At the appeal hearing before me, Mr Jarvis accepted that the judge had failed to consider relevant matters including whether the appellant was entitled to a residence card on the basis of retained rights after divorce proceedings. In light of his concession I accepted that the judge had erred in law and set aside her decision. It was accepted that I was able to re-make the decision on the evidence available.

6. The appellant had produced further evidence consisting of copy payslips from ISS UK Ltd from 15 May 2017 until 9 February 2018 and original payslips from ABM (the same company with a change of name) from 16 February 2018 to 10 August 2018. Mr Jarvis said that he did not challenge the reliability of the evidence. He accepted that, in light of the judge's findings at [19] about the evidence available in relation to the appellant's ex-spouse's employment and the evidence before the judge as listed at [19] relating to the appellant's employment, together with the payslips currently produced, there was sufficient evidence to show that the appellant had achieved a permanent right of residence and the appeal could be allowed.

7. In light of Mr Jarvis's helpful concession, I allowed the appellant's appeal. The appellant had produced sufficient evidence to show that he had acquired a right of permanent residence card on the basis of a retained right of residence. He is entitled to a permanent resident card.

## **DECISION**

8. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and re-make it by allowing the appellant's appeal under the EEA Regulations on the basis of his entitlement to a permanent residence card.

Signed: 

Upper Tribunal Judge Kebede  
February 2019

Dated: 12