



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

Appeal Number: EA/11268/2016

THE IMMIGRATION ACTS

**Heard at Field House (RCJ)
On 25 March 2019**

**Decision & Reasons Promulgated
On 02 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**SHAMINDER SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S A Salam, Solicitor of Salam Immigration

For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of India date of birth 13 January 1976 appealed against the Respondent's decision dated 2 September 2016 to refuse an application for a permanent residence card as confirmation of his right to reside in the United Kingdom as the former spouse of [OJ] an EEA national exercising treaty rights in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).

2. The basis of that refusal was that the Appellant had not provided sufficient evidence to show that he had a retained right of residence following his divorce from an EEA national in accordance with Regulation 10(5) of the EEA Regulations 2006.
3. His appeal came before First-tier Tribunal Judge Heatherington who on 2 October 2017 dismissed his appeal under the Regulations. Permission to appeal that decision was given on 29 September 2017 by First-tier Tribunal Judge C A Parker. His appeal having been dismissed the enquiries were further made as to the basis of the refusal. The Respondent made a Rule 24 response on 29 January 2018 on the basis that the Judge had directed himself appropriately and was entitled to find that the evidence did not show she was exercising treaty rights at the appropriate time and that the Judge's conclusions were fully reasoned and properly open to him.
4. Before me Mr Jarvis properly identified that in fact so far as the issues were concerned the evidence showed, as did the Judge's decision, that Ms [J] had between the appropriate dates been exercising treaty rights as an EEA national and covering the period required so too had the Appellant been exercising employment in the United Kingdom. In all other respects it was accepted that the marriage had lasted more than three years of which the Appellant had resided in the United Kingdom at least one of those years and that the marriage had been dissolved.
5. The evidence showed in the light of the case law particularly of Baigazieva [2018] EWCA Civ 1088 that in fact at the date of the commencement of proceedings the Appellant had discharged the evidential burden of showing that the requirements of the Regulations had been met. The evidence therefore did meet the requirements of the Regulations at the material time and Mr Jarvis correctly accepted that there was no other basis upon which his appeal failed. Accordingly I find the Judge in his

decision was in error of law and accordingly the Original Tribunal's decision cannot stand.

6. The following decision is substituted in the light of the unchallenged evidence. The appeal is allowed under the 2006 Regulations.

ANONYMITY

No anonymity order was sought nor is one required.

Signed

Date 10 April 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

A fee award was not sought and much of the outcome of this appeal is driven by a greater realisation of the relevant date albeit that Baigazieva was reported as long ago as April 2018.

In these circumstances the after arising information and dates tends to show beyond doubt now that the appeal should succeed but no fee award is appropriate.

Signed

Date 10 April 2019

Deputy Upper Tribunal Judge Davey