Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/22781/2013
IA/30124/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 April 2014	**On 3 June 2014**
Oral Determination	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR EDUARDO PEDRA
MASTER LEONARDO PEDRA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: First Appellant in person
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Mr Eduardo Pedra and Master Leonardo Pedra with permission against the determination of First-tier Tribunal Judge N M K Lawrence promulgated on 10 January 2014 in which he dismissed their appeals against the decisions by the respondent pursuant to the

Immigration (European Economic Area) Regulations 2006 to refuse to issue them with residence cards as confirmation of their rights of permanent residence.

2. The first appellant, who was born on 1 October 1985, is the father of the second appellant, born on 21 March 2006; both are citizens of Brazil. The first appellant was married to a Polish national, Miss Anna Golonka, in Brazil in January 2007. The couple then travelled to the United Kingdom where Miss Golonka worked and was therefore exercising treaty rights as she was entitled to do as a Polish national. Their child, the second appellant, was born here but the relationship broke down and in 2011 Miss Golonka petitioned for divorce which was made final on 7 September 2011 the date of the degree absolute. Since that date (and indeed before then) Mr Pedra has been in employment. He has joint care of the second appellant who lives primarily with his mother who continues to exercise treaty rights in the United Kingdom.

3. An application was made by the first appellant for confirmation of his right of permanent residence in the United Kingdom. His son was included in that application. The applications were refused by the Secretary of State for the reasons set out in the refusal letter dated 30 May 2013 which accompanied refusal notices in respect of both appellants dated 30 May 2013. It is unfortunate that the refusal notice in respect of the second appellant is expressed in identical terms to the notice in respect of his father as clearly the second appellant is not applying as the spouse of a former EEA national; the position of the second appellant is a matter I will deal with at the end of my decision.

4. In summary the Secretary of State refused the application as she was not satisfied that the first appellant had shown that he had been living in the United Kingdom for a period of five years in accordance with the Regulations. That period has to be covered by in this case the first appellant living in the United Kingdom whilst his wife was exercising treaty rights and as a person who had pursuant to Regulation 10(5) of the EEA Regulations retained a right of residence, residence in that capacity accounting for the remainder of the period after divorce. The respondent reached these conclusions because the appellant had not provided a divorce certificate and had not provided sufficient documentary evidence to show firstly that his wife had been exercising treaty rights prior to the divorce, second that she had been exercising treaty rights at the point of the divorce and that the appellant had not provided sufficient evidence of him working in the United Kingdom, that is fulfilling the requirements of Regulation 10(6) of the EEA Regulations. Appeals were then lodged with the First-tier Tribunal, the appellants electing for the matter to be determined on the papers.

5. The appeals came before First-tier Tribunal Judge N M K Lawrence who noted that there was limited evidence before him. He concluded that there was insufficient evidence to show that the appellant's former wife was exercising treaty rights in the United Kingdom at the date of the

application. He also noted also that the appellant was married to Miss Golonka.

6. The appellant applied for permission to appeal against that decision on the grounds:-

   (a) that the judge had erred in concluding that the appellant was still married when this was not the case and a degree absolute had been provided as evidence of that;

   (b) that there was evidence before the judge that she had been exercising treaty rights up to and until the date of the divorce and seeking to adduce further evidence.

7. On 4 March 2014 I granted permission to appeal on the basis that it was arguable that Judge Lawrence had erred by proceeding on the basis that the first appellant was still married to an EEA national when he was divorced, as shown by the decree absolute dated 7 September 2011 which was before him; and as the judge's findings related to the issue of whether the ex-wife was at the date of application exercising treaty rights (which was not relevant) and thus he had failed to make relevant findings.

8. Subsequent to the grant of permission, the respondent issued a Rule 24 letter on 24 March 2014 stating that the respondent does not oppose the appellant's application for permission to appeal and invited the Upper Tribunal to determine the appeal with a fresh oral hearing to consider whether the appellant has retained a right of residence under Regulation 10(5) and/or has acquired permanent residence under Regulation 15(1)(f) of the same Regulations.

9. When the matter came before me there was some discussion as to what was now in dispute given that there has been a substantial amount of documentation provided by the first appellant in respect of the first appellant's former wife prior to the divorce; around the time of divorce; and the first appellant's earnings subsequent to the divorce.

10. The documents produced include a number of letters from HM Revenue & Customs stating that the appellant and his ex-wife were entitled to working tax credits and covering the three years prior to divorce. These set out the number of hours per week worked by Miss Golonka and her earnings. It is evident also from the nature of the awards that Miss Golonka was working for over 30 hours a week. Given that these are facts accepted by HM Revenue & Customs I consider that the documents are reliable evidence of Miss Golonka working in the United Kingdom and I am satisfied that she was employed in the United Kingdom and therefore exercising treaty rights for the period from 15 February 2008 until the divorce, that being confirmed by a further tax credit award.

11. In addition, there are also wage slips provided which show that Miss Golonka was employed around the date of the divorce, specifically the tax

calculation from HM Revenue & Customs issued on 11 September 2011. For these reasons I am satisfied that given that the letters show that the appellant and his former wife were living in the United Kingdom and that Miss Golonka was exercising treaty rights through employment as a worker up until the date of divorce.

12. Turning then to whether the appellant fulfils the requirements of Regulation 10(6) I note that there are a number of wage slips produced indicating that he has worked for several different employers. I am satisfied, viewing these as a whole and given that they cover an extensive period with a single employer and bearing in mind the figures given in the wage slips for the gross pay to date in respect of the first appellant's earnings show a continuity of employment between the dates of the wage slips, that the first appellant does fulfil the requirements of Regulation 10(6) of the EEA Regulations in that he has, since the date of divorce been employed and, were he an EEA national, he would have been a "worker" and thus a qualified person.

13. Accordingly I am satisfied on the basis of the evidence before me that the first appellant does meet the requirements of Regulation 15 of the EEA Regulations and is entitled to be issued with a residence card as confirmation of his permanent right of residence.

14. Turning to the second appellant, he is of course a minor and is partially in the care of his mother who it appears is still exercising treaty rights and is a Polish national. On that basis and the basis of his relationship with his father who for the reasons set out above is entitled to a residence card I am satisfied he is also entitled to be issued with a card as confirmation of his right of residence.

15. Accordingly I am satisfied that the First-tier Tribunal did make an error of law affecting the outcome of the decision. That decision is set aside and I remake the determinations in respect of both appellants by allowing the appeals under the EEA Regulations.

SUMMARY OF CONCLUSIONS

1 The determination of the First-tier Tribunal did involve the making of an error of law, and I set it aside.

2 I remake the decision by allowing both appeals under the Immigration (European Economic Area) Regulations 2006

Signed Date approved: 2 June 2014

Upper Tribunal Judge Rintoul