



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

Appeal Number: IA/29733/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 April 2015**

**Decision & Reasons Promulgated
On 12 May 2015**

Before

**THE HONOURABLE MRS JUSTICE MCGOWAN
UPPER TRIBUNAL JUDGE MCGEACHY**

Between

MR ZOHIER TAGUELMIMT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, Counsel instructed by UK Immigration Legal Services

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This appellant appeals, with permission, against the decision of First-tier Tribunal Judge Greasley promulgated on 5 January 2015 which followed a hearing on 11 December 2014, that decision being to dismiss his appeal under the EEA Regulations and under Article 8.
2. Permission was granted on two grounds,

- i) that it was arguable that the Tribunal erred first in that it failed to attach weight or sufficient weight to the submission by the EEA national of her self-assessment tax returns as evidence of her self-employment between the years 2003 or 2004 and 2009 and
- ii) that the Tribunal erred in finding that the EEA national's delay in declaring her tax liabilities in respect of that employment was sufficient to cast doubt on their existence.

The background is relatively straightforward and I am grateful to the First-tier Tribunal for their summary of the relevant facts.

3. The appellant is an Algerian national who was born on 25 November 1986. He came to the UK and was issued with a residence card on 12 June 2003 as the spouse of a French national, Saida Nathalie Errin. The decree absolute shows that their marriage was dissolved on 30 May 2013. It was accepted that his former spouse now resides in France. It is relevant to note that the appellant was sentenced to a term of three months' imprisonment on 28 January 2009 for an offence of theft.
4. On 16 May 2014 the appellant applied for permanent residence as confirmation of a right of residence. In order to satisfy Regulation 10(5) he had to show:
 - 1) evidence that his former spouse had been exercising her free movement rights in the UK at the time of the divorce,
 - 2) that the marriage had lasted for at least three years,
 - 3) that he and his spouse had resided in the UK for at least a year during the marriage,
 - 4) that he was in employment, self-employment or economically self-sufficient, and for his purposes his case is that he has been in employment at the relevant times,
 - 5) that he had resided in the UK for a continuous period of five years within the Regulations which required him to show that his former spouse had been continuously exercising her free movement rights up to the point of the divorce and
 - 6) that he had continued in employment since the divorce.
5. To meet the requirements of Regulation 15(i)(f) the evidence required had to cover a five year period. The appellant produced in the Tribunal a number of documents in support of his appeal against the respondent's earlier decision. He produced a marriage certificate showing that he and his former spouse had married in April 2003. He produced a decree absolute dated 30 May 2013 and he produced a succession of payslips which showed and proved that he had been resident in the UK for at least a year.

6. Prior to the respondent's decision he had not provided evidence in the following categories. He had not provided evidence that his former spouse was a qualified person at the time of the divorce, which meant that he had not shown that he was residing in the UK in accordance with the Regulations at the time of the divorce. He had also failed to satisfy Regulation 10(6) which required him to show, by evidence, that he had been working since the divorce and further he was not able to provide evidence of the fact that he met the requirements of Regulations 10(5) and 10(6) and had not retained his rights of residence since the time of the divorce.
7. The respondent had also considered, given the length of the marriage, whether the appellant qualified for permanent residence during the time he had been a family member of an EEA national. The appellant had submitted his former wife's payslips which spanned dates between 29 January 2003 and 29 April 2003 and material which he said was evidence of her self-employment. There were at that stage highlighted a number of discrepancies which had caused the Secretary of State not to treat those documents as genuine. The Secretary of State pointed out that the tax code did not change on the payslips despite the change of tax year. The documents purported to show a national insurance number but HMRC records showed that she did not in fact have a national insurance number at the relevant time. The appellant claimed that his former spouse had been self-employed since 2003 but the letter from HMRC dated October 2009 showed that the Revenue was thanking her for her notification of her self-employed status commencing in June 2009. The Secretary of State refused to accept the tax calculations dated 2009 but purporting to cover the previous six years as proof that his former spouse was economically active in the United Kingdom as a self-employed person at the relevant time.
8. It appeared, as the Secretary of State found, that the appellant's former wife had not contacted Revenue & Customs about her being self-employed until six years after the time at which the appellant claimed she had taken up self-employment. There was no documentary evidence of work being carried out. There were no invoices, no statements, no audited accounts, no business bank accounts, no receipts or no form of advertising of any sort of business. We accept the point made by Mr Aslam that some forms of self-employment produce less documentation than others and that the list as identified is illustrative rather than a formal requirement but the fact was that no contemporaneous material at all to support the appellant's contention of his former wife's self-employment was provided or indeed has been provided.
9. The evidence called by him at the hearing of the appeal against the Secretary of State's decision came from him alone. He gave evidence of his own employment, which certainly continued by virtue of the material he produced until 2013. He gave evidence that his wife had been employed for about the first year of their marriage as a housekeeper. Thereafter she had become self-employed and his evidence in terms was

that he could not recall a time throughout their relationship at which she had not been working, either in the early days as an employee or on his account for almost the entirety of their marriage and time together in a self-employed status. They had, he said, separated in 2009 and she had left the United Kingdom in 2011 returning to France, and we are told and accept that she has played no part in his life since then. The divorce finally was made absolute in 2013.

10. The appellant at the hearing below produced payslips for his wife dated 2003 and self-assessment tax returns purporting to be for the years from 2004 to 2009, all of which, it must be noted, were dated by the Revenue as being received in 2009. He produced his own bank statements which showed his employment and the income he received from it up and until 2013 but was only able to produce what was described as a shortened version of a bank statement for 2014 which could not prove details as to where he was being paid at that stage. He gave evidence on his own behalf and produced documents but could not account for what the Judge of the First-tier Tribunal was to find was a discrepancy between the letter from the Revenue thanking his former wife for registering her status as self-employed and his account that although that letter and registration had taken place in 2009 she had in fact been self-employed dating back as long as 2003.
11. The judge was not satisfied on the evidence before him that the appellant either fulfilled the requirements of the 2006 Regulations or that he had a valid claim under Article 8. He found that despite having had ample opportunity to deal with the issues raised in her decision letter by the Secretary of State the appellant had not done so in documentary or oral evidence. Those are findings which the judge was perfectly entitled to reach on the evidence both oral and documentary before him. He found, as he was to express in his reasons at paragraph 19, conflict between the appellant's account and the Revenue letter of October 2009 which he could not resolve in the appellant's favour. He considered that under the Regulations the evidence which had been provided did not satisfy the requirements on the appellant to show the claimed family membership for a period of ten years nor the exercise of treaty rights for a continuous five year period during the marriage.
12. In addition he considered the claim under the well-known **Razgar R v (SSHD) [2204] UKHL 27** principles and found that the original decision was proportionate and therefore reasonable in all the circumstances. He considered and found, notwithstanding the appellant's residence in the UK for thirteen years or thereabouts, that he had no right to remain here permanently. He further found that the appellant has skills which are eminently transferable and which could be used by him to find employment in Algeria. He found that his private life would continue in all its essential elements and that his preference to remain here could not be satisfied on the evidence provided. Accordingly the judge in the Tribunal below dismissed the appeal against the Secretary of State's refusal.

13. We find that the judge was entitled to find as he did, that the appellant was required to satisfy the Tribunal of both aspects of his former spouse's employment or self-employment upon which he sought to rely despite the fact that she no longer resided in the UK. Further we find that the judge was entitled to dismiss the claim that she had been self-employed throughout the period from 2003 when all the Revenue & Customs documentation showed that she had not registered as self-employed until 2009 and that after that date had merely provided or there had been provided to the Revenue on her behalf or in her name a series of back calculations purporting to go back to the period beginning in 2003. He also found, as he was entitled to, that the anomaly, or discrepancy, between the payslips provided and the Revenue's records that no such national insurance number had been issued to his former spouse and that the tax code appeared incorrect were material discrepancies and that in the absence of any other evidence he was entitled to conclude that such discrepancies had not been adequately explained and could not support the contention of continuous self-employment by the spouse throughout the relevant period.
14. Accordingly this appeal is dismissed and the determination of 5 January 2015 stands.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date **6 May 2015**

Mrs Justice McGowan