



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

Appeal Number: IA/29218/2015

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham Promulgated
On 1st June 2017 On 14th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**MONICA FRIMPONG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Okyere-Darko of Stillwaters Solicitors
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Ghana born on 9th January 1974. The Appellant first arrived in the UK on 6th August 2004 when she was given leave to enter as a working holidaymaker. She married Kwame Amensahi-

Bonsufo on 1st February 2006, an EEA national. As a consequence the Appellant was issued with a residence card expiring on 1st July 2011. In the meantime the Appellant and her husband divorced. The decree absolute is dated 20th April 2010. The Appellant returned to Ghana between 2011 and 2014, and on 23rd January 2015 the Appellant applied for a further residence card on the basis that she had a retained right of residence. That application was refused on 22nd May 2015 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and her appeal was heard by Judge of the First-tier Tribunal J Robertson (the Judge) sitting at Birmingham on 1st April 2016. He dismissed the appeal for the reasons given in his Decision dated 13th April 2016. The Appellant sought leave to appeal that decision, and on 6th March 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. The Judge dismissed the appeal applying the provisions of Regulation 10(5) and (6) of the Immigration (EEA) Regulations 2006 (the Regulations). The Judge found that the Appellant failed to meet the requirements of Regulation 10(5)(b) because the Appellant, as opposed to her former husband, was not residing in the UK in accordance with the Regulations at the date of the divorce. Further, the Judge found that Regulation 10(6)(a) was not satisfied as the Appellant was not a worker etc. at the relevant time. In the alternative, the Judge found that the Appellant had lost any retained right of residence owing to her three year absence from the UK between 2011 and 2014 as provided for by Regulation 15(1A).
3. At the hearing, Ms Okyere-Darko argued that the Judge had erred in law in coming to these conclusions. He had mistakenly interpreted the provisions of Regulation 10(5)(b) to apply to the Appellant whereas they apply to the EEA national, being her former husband. Further, the Judge had erred in respect of Regulation 10(6)(a) as the relevant period to be considered was that commencing with the date of the divorce. There was ample evidence before the Judge contained in the Appellant's Bundle amounting to bank statements and wage slips showing that the Appellant was employed by the NHS during the relevant period. Finally, in his alternative decision the Judge erred by applying Regulation 15(1A) as this applied only to rights of permanent residence and not to rights of retained residence.
4. In response, Mrs Aboni argued that there were no such material errors of law. She referred to the Rule 24 response and although she accepted that the Judge erred as alleged in respect of Regulation 10(5)(b), there was no material error because the Judge came to a correct conclusion in respect of Regulation 10(6)(a). This was because there was no evidence that the Appellant had worked for the NHS throughout the period following her divorce. In particular, she had not been employed in the UK during her absence in Ghana and therefore Regulation 15(1A) did apply.

5. I find an error of law in the decision of the Judge which therefore I set aside. It is not now in dispute that the Judge erred by applying the provisions of Regulation 10(5)(b) to the Appellant whereas he should have applied them to the EEA national. The Judge should have found that the Appellant met the requirements of Regulation 10(5)(b) because at paragraph 11 of the Decision the Judge found that the Appellant had been married to a qualifying person. This error is material because the Judge also erred in his decision as regards Regulation 10(6)(a). There was ample evidence before the Judge that the Appellant had been gainfully employed in the UK from the date of the decree absolute. I find the argument of Mrs Aboni that it was necessary for the Appellant to be employed throughout the period from the date of the divorce to be erroneous. I find it also to be the case that the Judge incorrectly applied the provisions of Regulation 15(1A) to the Appellant. This Regulation applies only to a permanent right of residence and not a retained right of residence as established in the cases of **Kuldip Singh case C-218/14** and **Amos v SSHD [2011] EWCA Civ 552**. For these reasons I set aside the decision of the Judge.

Remade Decision

6. At the hearing I proceeded to remake the decision in the appeal. It is not now in dispute that the Appellant meets the requirements of Regulation 10(5) except for the provisions contained in Regulation 10(5)(c) and Regulation 10(6)(a). I find I am satisfied that those provisions are met. There is ample evidence contained in the Appellant's Bundle of her employment with the NHS since the date of her divorce.

Notice of Decision

7. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by allowing it.

Anonymity

8. The First-tier Tribunal did not make a direction for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Dated 12th July 2017

Deputy Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my decision to remake the decision in the appeal by allowing it, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance in such matters. I make a whole fee award in favour of the Appellant as I have allowed the appeal upon evidence which according to the Respondent's letter of 22nd May 2015 was before the Respondent when the original application for a residence card was refused.

Signed

Dated 12th July 2017

Deputy Upper Tribunal Judge Renton