Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01855/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th March 2018	**On 28th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

QUINTIN RONALD STRUCKMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Catherine Taroni of Richard Chambers LLP
For the Respondent: Ms Z Ahmed Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of South Africa born on 26th August 1977. The Appellant entered the United Kingdom and was subsequently issued with a registration certificate on 26th November 2006. Following his marriage to an EEA citizen, the Appellant was issued with a residence card on 31st October 2011. Although his marriage had broken down, on 28th July 2015 the appellant applied for permanent residence. After revoking the Appellant's registration certificate, the application for permanent

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residence was refused on 29th January 2016 for the reasons given in a Reasons for Refusal Letter of that date. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Manyarara (the Judge) sitting at Hatton Cross on 5th May 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 23rd May 2017. The Appellant sought leave to appeal that decision and on 8th January 2018 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.

3. An issue in the appeal was whether the Appellant satisfied the provisions of Regulation 15(1)(a) of the Immigration (European Economic Area) Regulations 2006 by residing in the UK in accordance with those Regulations for a continuous period of five years, which in this case meant whether the Appellant had been in employment throughout the required period of residence. The Judge proceeded to hear the appeal and dismissed it partly because he found that the Appellant had not discharged the burden of proof by producing documentary evidence of his employment.

4. At the hearing before me, Ms Taroni referred to her Skeleton Argument and argued that the Judge had erred in law by refusing an application by her for an adjournment so that a Direction could be issued by the Tribunal under the provisions of Section 40 of the UK Borders Act 2007 to obtain information from HMRC as to the appellant's employment. She confirmed that such an application had been made at the hearing before the Judge and had been refused by him.

5. In response, Ms Ahmed submitted that there had been no such error of law. She confirmed that according to the Record of Proceedings of her colleague who represented the Respondent at the hearing before the Judge, the Appellant did make such an application which was refused by the Judge. The Judge gave a verbal explanation for his refusal being that there had been an inordinate delay in the Appellant's failure to obtain the necessary evidence or to seek such a Direction. The Judge referred to the decision in **Amos v SSHD [2011] EWCA Civ 552**. The Judge had gone on to correctly dismiss the appeal on the evidence before him.

6. I find a procedural error of law in the decision of the Judge to refuse the application for an adjournment. There is no reference at all in the decision as to the application to adjourn and therefore of the Judge's decision to refuse it. In the file there is a manuscript Record of Proceedings from the Judge which again makes no reference to the application to adjourn nor his reasons for refusing it. With all respect to Ms Ahmed and her colleague who represented the Respondent before the Judge, I cannot rely upon Ms Ahmed's hearsay comments as to the reasons for refusal given by the Judge. Therefore, I have no way of knowing if the Judge decided the

application to adjourn in accordance with the overriding objective given in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. There is nothing to show that the Judge decided the application to adjourn in accordance with that overriding objective. I am therefore driven to the conclusion that the Judge made a material error of law in deciding the application to adjourn without applying the overriding objective given in the Rules.

7. I did not proceed to remake the decision in the appeal. That decision will be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements as there is further judicial fact-finding to be made.

Decision

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.

The decision in the appeal will be remade by the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed Date 26th March 2018

Deputy Upper Tribunal Judge Renton