



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02593/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Promulgated
On 4 October 2018**

**Decision & Reasons
On 11 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

MR ENOCH QUAYE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth on 1 August 2018 against the dismissal of the Appellant's EEA permanent residence card appeal by First-tier Tribunal Judge Randall, in a decision and reasons promulgated on 6 June 2018. The Appellant is a national of Ghana, born on 21 June 1970. He relied on retained rights of residence as the former spouse of an EEA national. The appeal was heard on the papers as had been requested.
2. Permission to appeal was granted because it was considered arguable that the judge had proceeded without all of the evidence which should have been available. The Respondent's bundle was missing.

3. There was no appearance by or on behalf of the Appellant at the Upper Tribunal hearing. The usual enquiries were made of his solicitors but contact could not be established. The tribunal decided to proceed in the Appellant's absence, which appeared to be the Appellant's intention.
4. The Appellant had earlier filed and served two large bundles of documents, under cover of a letter dated 5 September 2018. Neither bundle had been submitted to the First-tier Tribunal Judge and the tribunal declined to admit them for the purpose of deciding whether or not there had been a material error of law.
5. Mr Lindsay for the Respondent submitted in summary that any error of law had not been material, as the Appellant had not produced sufficient evidence on any view to show that he met the Immigration (EEA) Regulations 2016. It had not been clear at what stage the Respondent's bundle had been filed with the tribunal, but the copy now available showed that the documents produced by the Appellant with his EEA application had been sparse indeed, and far from sufficient to prove his claim. There were, for example, only a few payslips from the former spouse, and nowhere near enough to cover a 5-year period. If the Appellant had now obtained additional documents, as appeared to be the position, it was open to him to make a fresh EEA application so that they could be considered by the Secretary of State for the Home Department.
6. Complaint is frequently made to the Upper Tribunal that a First-tier Tribunal "papers" hearing has in some way been defective. While the choice of a "papers" hearing is open to appellants, they must accept the consequences of not being present in person or through a representative to deal with queries or to explain their case. Here the judge took the sensible decision to proceed with determining the appeal despite the absence of the Home Office bundle. The burden of proof was on the Appellant at all stages and there was no reason for the Appellant to assume that because a document or documents was or were in the Home Office bundle, that bundle had been served and would be available to the judge, and would be complete. That would constitute a dangerous assumption, given the large numbers of files with which the Home Office has to deal, the risk of human error and the limited extent of resources. The Appellant was legally represented and practitioners in this field should be well aware of such matters. What, too, if there was a dispute about what had in fact been sent to the Home Office? That, of course, was precisely the situation here, as the judge pointed out at [9] of his decision.
7. The judge went on to produce a thorough and careful consideration of the evidence which the Appellant had chosen to provide, within the correct legal framework. He accepted that the Appellant had proved his former wife's identity. He explained why the evidence of economic activity had been insufficient, in the course of a full

and clear decision. As Mr Lindsay pointed out, even if the Home Office bundle had been available, it would have changed nothing because the documents produced with the EEA application were sparse and failed to cover the necessary period.

8. The tribunal accepts Mr Lindsay's submissions and concludes that the judge was entitled to proceed as he did. There was no unfairness. The Appellant failed to produce sufficient evidence to prove his case when seeking a "papers" determination. There was no error of law and the decision and reasons stand unchanged.

DECISION

The appeal to the Upper Tribunal is dismissed

The original decision stands unchanged

Signed

Dated 4 October 2018

Deputy Upper Tribunal Judge Manuell