



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/24817/2015

THE IMMIGRATION ACTS

Heard at Field House
On 27 March 2018

Decision & Reasons Promulgated
On 18 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IMRAN HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J. Isherwood, Home Office Presenting Officer
For the Respondent: Ms J. Howorth, Westkin Associates

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Oliver promulgated on 18 July 2017 in which he allowed Mr. Hussain's appeal against the Secretary of State's decision to refuse to issue a permanent residence card.
2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to Mr. Hussain as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“The judge had concentrated on the issue whether the Appellant’s ex-spouse had been exercising treaty rights, understandable as that appears to have been the main issue in the case. However it is arguable that in a short decision there is no reference to the Appellant’s own position in terms of exercise of treaty rights such as work as if he was an EEA citizen from the date of the divorce onwards a requirement under the regulations for the Appellant to be granted a permanent residence card for which he had applied. It is arguable therefore that the judge erred in not considering at all a significant aspect of this case.”

4. At the hearing I set aside the decision to the extent that it allowed the appeal under the EEA Regulations without having made findings as to the Appellant’s own exercise of Treaty rights. The findings in respect of the Appellant’s ex-spouse were not challenged, and these findings stand. I stated that I would remake the decision having considered the Appellant’s exercise of Treaty rights.

Error of Law

5. In the Respondent’s decision to refuse to issue a permanent residence card to the Appellant it clearly states that the Appellant needs to provide evidence that, since the date of the divorce, he had been a worker, a self-employed person or a student (page 2). In the grounds of appeal before the First-tier Tribunal, it was submitted that the Appellant had provided sufficient evidence that he was currently in employment and had been employed prior to the breakdown of his marriage [3]. However, the Judge did not consider at all the Appellant’s own exercise of Treaty rights.
6. In the grounds of appeal before this Tribunal there was no challenge to the finding that the Appellant had shown, through checks conducted by the Respondent, that his ex-spouse had been exercising Treaty rights for the relevant period.
7. As accepted in the grounds of appeal before this Tribunal, and as was agreed at the hearing, the Appellant needed to show that he was working from the date of divorce until 27 June 2016. I find that the Judge erred in allowing the appeal without having considered this issue. Accordingly, I set aside the decision to allow the appeal.

Remaking

8. As stated above, there was no challenge to the finding that the Appellant’s ex-spouse had been exercising Treaty rights, and I adopt that finding here. I find that the Appellant has shown that his ex-spouse was exercising Treaty rights for the relevant period. The only issue before me is whether the Appellant himself was exercising Treaty rights from the date of the divorce, 14 August 2014, until 27 June 2016. This is a five year period starting with the date of marriage, 27 June 2011.
9. Ms Howorth provided a table which detailed the evidence provided by the Appellant showing his exercise of Treaty rights from 13 July 2014 until 30 June 2016. Ms Isherwood was given time at the hearing to consider this table, which referred to evidence in the Appellant’s bundle. The only objection to this evidence by Ms Isherwood at the hearing was in relation to a payment made in May 2016. I was referred to the Appellant’s Nationwide statement of account dated 24 June 2016

(page 255). This shows on 31 May 2016 a bank credit for the amount of £2,013.03. The corresponding payslip shows, for the payment period ending 31 May 2016, a net pay of £2,013.03 (page 187). Ms Isherwood's objection was the fact that the credit comes from the Bank of Baroda, not Ebury. Ms Howorth stated that she had not taken instructions on that particular point.

10. The burden of proof lies on the Appellant and the standard of proof is the balance of probabilities. I have considered the bank statements as a whole. There are statements which pre-date and post-date this one which show some payments made to the Appellant from Ebury, for example page 253, but some from Bank of Baroda. However, in all cases, the amounts paid correspond to the Ebury payslips provided by the Appellant. There was no objection to the payslips at the hearing. The Appellant's representative stated that she had the originals with her, but there was no request to see them, and no challenge to them. Some originals were also on the Tribunal file.
11. I find on the balance of probabilities that the payments made to the Appellant, either from Ebury, or from Bank of Baroda, are in respect of his employment at Ebury. I find that the fact that some payments are listed as coming from the Bank of Baroda, given the evidence before me, does not cast doubt on the Appellant's claim to have been employed by Ebury as claimed.
12. I find, with reference to the schedule of evidence provided by Ms Howorth, and with reference to the evidence itself, that the Appellant has shown on the balance of probabilities that he was exercising Treaty rights from the date of the divorce, 14 August 2014, until 27 June 2016. The Appellant provided payslips and P60s covering this entire period.
13. Therefore I find, having taken into account all of the evidence provided, that the Appellant has shown on the balance of probabilities that he was exercising Treaty rights for the period required by the Regulations. I find that the Appellant has addressed the sole issue which was outstanding before me.

Notice of Decision

14. The decision of the First-tier Tribunal is set aside.
15. I remake the decision allowing the Appellant's appeal under the EEA Regulations.
16. No anonymity direction is made.

Signed

Date 12 April 2018

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and, because a fee has been paid or is payable, I have considered making a fee award. The evidence was provided for the appeal, not with the application. In the circumstances I make no fee award.

Signed

Date 12 April 2018

Deputy Upper Tribunal Judge Chamberlain