



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/04729/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> June 2014

Determination Promulgated  
On 08<sup>th</sup> July 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MS DORA ASIEDU FARKYE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance (Request Paper Appeal)  
For the Respondent: Mr Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana born on 23<sup>rd</sup> November 1976.

2. She seeks to appeal against a notice of decision from the respondent dated 3<sup>rd</sup> January 2014 refusing to issue her with a residence card as confirmation as a right of residence under European Community law as the ex-spouse of an EEA national exercising treaty rights.
3. In essence the position of the respondent was that there was a lack of evidence to show that the appellant's ex-spouse was a qualified person at the time of the divorce. In those circumstances the appellant did not retain a right of residence in accordance with Regulation 10(5) of the Immigration (EEA) Regulations 2006.
4. As was pointed out to the appellant what was required was as follows:-
  - “(1) Evidence that the EEA spouse was exercising free movement rights in the United Kingdom at the time of the divorce.
  - (2) Evidence that the marriage had lasted for at least three years and that she and her former spouse resided in the United Kingdom for at least one year during the marriage.
  - (3) Evidence that the appellant was currently in employment, self-employment or economically self-sufficient as if she were an EEA national.”
5. No issue has been taken as to the latter two requirements but simply as to the first.
6. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Blair. It would seem that the appeal was determined on the papers without a hearing. There is a bundle of documents that was submitted before the Judge. There is an undated statement from the appellant setting out her situation and circumstances.
7. She entered the United Kingdom on 17<sup>th</sup> April 2004 and during the course of her stay met her ex-husband who is a Portuguese national. They formed a relationship and were married according to traditional rights in Ghana on 11<sup>th</sup> May 2009. The appellant was issued a residence card valid from 10<sup>th</sup> March 2010 to 10<sup>th</sup> March 2015.
8. She and her husband stayed together at that address both being employed. They began to have disagreements and her husband indicated that he would be moving back to Spain for good. She did not wish to move with him and they mutually agreed to separate and she authorised her family in Ghana to file for a divorce. The marriage was dissolved on 20<sup>th</sup> May 2013.
9. The application to remain in the United Kingdom upon a residence permit was issued on 1<sup>st</sup> October 2013. There was little detail that was provided as to the activity of the husband. The appellant had submitted a number of documents seeking to show that he had been exercising treaty rights as at the time of the divorce. There

were four HMRC self-assessment tax calculations spanning the period April 2009 to April 2013. They purported to show profits from self-employment of £3,500, £3,900, £4,950 and £3,500. It was submitted that that was sufficient to show that her ex-husband was at the material time a qualified person exercising treaty rights.

10. The documents themselves are far from helpful. Essentially no tax had to be paid on any of those assessments. There was little indication as to what occupation if any was followed by the ex-husband. Significantly something that perhaps could have been easily stated by the appellant in her statement was not, namely by the nature of her husband's work.
11. By contrast the appellant has put in detailed wage slips for herself showing her work with Home From Hospital Limited and for the most part the documents that are submitted in the bundle that was before the Judge are essentially her qualifications and her working.
12. By way of example there is a P60 for the appellant for the year ending 5<sup>th</sup> April 2012 showing £18,286 by way of employment with the various payslips to Cambuslodge UK Limited submitted.
13. The only other document of relevance to her former husband is noted by the Judge. That is the national insurance contribution letter dated 30<sup>th</sup> March 2013 giving a summary of outstanding liabilities from 2009 to 2013. They amount to very little indeed and are predicated on the basis that the appellant was still self-employed when these charges were incurred. The letter itself says the payment due £455.95 "tell us now if you are no longer self-employed as you may not owe this".
14. The Judge noted that the documentation preceded the date of divorce in any event. The Judge noted paragraph 14 **EA ("Revocation of Retained Rights") Syria [2011] UKUT 00165 (IAC)**. The Judge noted that the focus of this appeal was of the spouse's status as a worker at the date of divorce. The Judge did not consider that the documents that had been presented amounted to sufficient evidence that her ex-spouse was indeed employed or working at the time of the divorce. Indeed he may have ceased self-employment before making belated national insurance contributions and there was no clarification as to what work he was doing.
15. Thus the appeal was dismissed. Grounds of appeal were submitted in somewhat complicated form.
16. Complaint was made that the Judge was wrong to make such a finding as to the documents. She contended that indeed her husband had been a qualified person as at the time.
17. There was also concern expressed that the Judge in his remarks seemed to be treating the application as an out of country ECO application rather than one that was in-country.

18. Permission to appeal was granted on 8<sup>th</sup> May 2014 on the basis that the Judge erred in saying that the appellant was outside the United Kingdom, that that may have influenced the Judge in what documents had been accepted in the appeal.
19. Thus the matter came before me in pursuance of that grant of leave. There was a letter from Jade Law Solicitors dated 13<sup>th</sup> June 2014 confirming that the appellant relied on the witness statement and evidence submitted at the appeal. Once again an indication was given that she and her representatives would not be in attendance but would be content for the matter to be dealt with on the papers.
20. The same undated statement to which reference has been made was attached to that letter together with the national insurance contribution letter to which reference has already been made. There is marked upon the national insurance contributions a Post Office receipt issued on 16<sup>th</sup> June 2013 for £50 via the Santander pay service. To what extent that it is relevant to the payment of the contributions is far from clear.
21. In essence, therefore, the documents that are relied upon were those which were before the First-tier Tribunal Judge. No attempt would seem to have been made to clarify the issues.
22. The real difficulty with self-assessment is that there is no objectivity in the assessment as to what is being earned and how. The self-assessment forms for example are not submitted nor is there the slightest indication as to what the ex-husband did by way of occupation or employment. Accepting as I do there are sometimes difficulties in obtaining documentation following divorce it is clear that the appellant lived with him for a number of years and presumably therefore would be able to say what he did and to obtain some evidence from those for who he worked as to the work that was undertaken. The fact that this is the second opportunity which the appellant has had to produce documents or information concerning the employment or occupation of her ex-husband and that is not forthcoming.
23. In the statement she refers to him returning seemingly to Spain although Portuguese but gives no detail as to when that was relative to her divorce.
24. The grounds of appeal and indeed the skeleton argument that is advanced in support is somewhat complicated in its terms. In fact it seems to contain the contention that the application for permanent residence was not dependent on the husband. There was some suggestion that the requirement that the ex-husband had been exercising treaty rights at the time of divorce was not a requirement under law.
25. Insofar as that is contended I reject it in the light of **HS (EEA Revocation of Obtained Rights) (Syria) [2011] UKUT 165 (IAC)**. Such makes it clear that Regulation 10 of the Immigration (EEA) Regulations 2006 requires the appellant to demonstrate that a genuine marriage that has lasted three years the couple have

spent one year together in the United Kingdom and that the EEA national spouse was exercising treaty rights at the time he ceased to be a family member.

26. Given the paucity of the documentation that has been produced, even applying the balance of probabilities, I find that the Judge was entitled to come to the conclusion which was arrived at namely that there was insufficient evidence that the ex-husband was exercising treaty rights at the date of divorce. In those circumstances I uphold the decision by the Judge that the relevant Regulation is not met.
27. The grounds also touch upon the fact that the Judge seems not to have considered Article 8. Once again the paucity of information contained in the appellant's statement and lack of particulars as to family members if any in the United Kingdom or interests or involvement other than working. Such does not in my view provide a satisfactory basis upon which to invoke Article 8 of the ECHR. Indeed the argument as to Article 8 set out in the skeleton argument is brief in the extreme indicating that the appellant has been with her current employer since 2010 and has completed a number of work related courses and has built up links in her community and friends at work.
28. Once again if it had been seriously contended that the appellant's human rights would be breached upon removal there could have been further details about her private and or family life.
29. Overall therefore I find that the decision of the First-tier Tribunal Judge was one that was properly open to be made. In those circumstances the original decision will stand, namely that the appeal under the Regulations is dismissed.

Signed

Date

Upper Tribunal Judge King TD