Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00019/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16th January 2018	**On 07th February 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MANGAL SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel instructed by Charles Simmons Immigration Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India seeking to appeal against a decision of the respondent made on 15th December 2015 to refuse to issue an EEA residence card under the Immigration (European Economic Area) Regulations 2006.

2. It was the case of the appellant that he met the criteria of Regulation 10(5)(a) seeking the grant of such a certificate upon his divorce from his wife who was an EEA national.

3. The immigration history of the appellant is somewhat complex, as can be seen from the reasons for refusal letter. Essentially it was the position of the respondent in that decision that the marriage was undertaken purely to facilitate the application to remain. It was the view of the caseworker that it was a marriage of convenience and on that basis the application which had been made on 9th June 2015 was refused.

4. The appeal came before First-tier Tribunal Judge Howard on 9th March 2017 and was dismissed.

5. The Judge dismissed the suggestion that it was a marriage of convenience, finding that it had indeed lasted three years and that appellant and his ex-wife had resided in the United Kingdom for at least one year during the marriage. It was accepted on the basis of documents provided that the appellant was, at the date of decision, in employment, self-employment or economically self-sufficient.

6. The Judge did not find, however, that there was any evidence that at the time of the divorce his ex-wife was exercising treaty rights and on that basis the appeal was dismissed.

7. Challenge has been made to that decision, essentially on the basis that that particular ingredient was never in issue and that it was wrong of the Judge to have placed it in issue, and secondly that the Judge failed to acknowledge the fact that it would have been easier for the respondent to have obtained such evidence from HMRC given the practical difficulties faced by the appellant in obtaining employment documents from his wife. It is common ground that the appellant has indeed obtained from HMRC the necessary evidence but that had not been obtained at the time of the decision. Permission to appeal to the Upper Tribunal was granted, and on that basis the matter comes before me to determine that issue. Mr Khan, who represents the appellant, represented him at the hearing before Judge Howard.

8. The refusal letter is a detailed one that is focused essentially upon the issue of whether or not the marriage is one of convenience.

9. A significant passage in that decision was as follows:-

> "Despite both you and Bozena admitting to not living together since at least May 2009, you have provided joint bank statements and joint Council Tax letters in order to deceive the Department into believing that you have resided with Bozena, after 2009. It appears that once you married Bozena in India, in 2009, you have ceased to live with each other".

Though the Judge seems to have found as a fact that the appellant and the sponsor had lived together for the requisite year it is not entirely clear whether the Judge applied consideration to that particular passage. However, no counter appeal has been lodged in relation to that aspect.

10. In any event the documents submitted by the appellant are noted, some referring to Bozena but the majority referring to the appellant. The Respondent's decision is altogether silent upon the issue as to whether or not Bozena was in fact exercising treaty rights at the time of the divorce.

11. Mr Khan submits that because the decision was silent it was an implicit acceptance of that ingredient. For my part I find that to lack merit but more particularly that was an argument, which was advanced before the Judge and the Judge also rejected that argument at paragraph 21 in the following terms:-

> "The evidence of his ex-wife exercising Treaty rights at the time of the divorce is absent. In submissions Mr Khan argued that it was accepted by the respondent that this was the case. I cannot find such a concession in the refusal letter".

12. Part of the difficulties of course for the Judge was that the respondent was unrepresented at that hearing. I note nothing, however, by way of correspondence between those acting on behalf of the appellant and the respondent on that issue.

13. The burden is upon the appellant to produce the evidence in support of his claim. That evidence may have come from documents supplied by his ex-wife or indeed from statements from HMRC. It is abundantly clear that in this case it was the appellant, through his solicitors, who obtained confirmation from HMRC evidencing his ex-wife's continued income since 2012. No reason had been advanced as to why that application to HMRC could not have been made earlier on behalf of the appellant. There is no indication as to what difficulties, if any, were placed in the position of the appellant in getting the information.

14. It is generally accepted that, if for various reasons an appellant faces difficulties in obtaining the necessary information, the good offices of the respondent can be sought to approach HMRC to help obtain that evidence. As I have indicated there is no suggestion that that was any request made to the respondent in this case nor has any difficulty in obtaining the evidence been mentioned to the respondent or indeed to the Judge at the hearing. There is no automatic obligation upon the respondent to obtain that evidence. In common sense it is for the appellant at the very least to notify the respondent of the difficulties and request some assistance but that was not done either before the hearing nor indeed were any difficulties in obtaining that evidence made clear to the Judge.

15. In all the circumstances I do not find there to be any error of law in the approach taken by the Judge. It was for the appellant to produce that

evidence to seek assistance in order to do so should that have been required.

16. Mr Khan invites me to adjourn the hearing in order for those instructing him to correspond with the respondent given the details of the HMRC to see if the matter can be resolved. I see no proper basis to adjourn this hearing. An adjournment is normally for the purpose of clarifying an issue that is relevant to the outcome of the appeal. It is not necessary in this case as I have concluded that there is no error of law in the determination of the Judge.

17. The appellant's solicitors now armed with the financial details can of course raise that matter with the respondent in the light of the decision that has been made and the determination upon. It does not require any further involvement with this Tribunal.

Notice of Decision

18. The appellant's appeal to the Upper Tribunal is dismissed. The original decision of the First-tier Tribunal Judge is upheld, namely that the appellant's appeal in connection with the refusal of an EEA certificate is dismissed.

No anonymity direction is made.

Signed Date 5th February 2018

Upper Tribunal Judge King TD