



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00743/2017

THE IMMIGRATION ACTS

Heard at Field House
On 30 August 2018

Decision and Reasons Promulgated
On 12 September 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

OLUFUNKE SOTUNDE ABAYOMI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The applicant appeals with permission against the decision of First-tier Tribunal Judge Geraint Jones QC dismissing her appeal against the respondent's decision on 12 January 2017 to refuse her permanent residence pursuant to Regulation 10(5) of the 2016 EEA Regulations.
2. It is now I think common ground that the applicant is able to show that she ceased to be a family member of a qualified person or an EEA national on the termination of her marriage and that applying *Baigazieva v Secretary of State for the Home Department* [2018] EWCA Civ 1088, the date of termination of her marriage is the date when the divorce petition was lodged, 12 November 2015.

3. The appellant provided further documents to the respondent, which are the subject of a later decision on 11 August 2017, which the appellant says she has appealed. That appeal is not before me.
4. The applicant has also made an Article 8 ECHR application, based on the length of time that her children have been in the United Kingdom, but the respondent has yet to make a decision on the human rights application.
5. In the present application, pursuant to Regulation 10(5)(a) of the Immigration (European Economic Area) Regulations 2016, the applicant was required to demonstrate that her former husband had a permanent right of residence in the United Kingdom on 12 November 2015 when she ended the marriage by issued divorce proceedings. On the evidence before the First-tier Judge he found as a fact that that had not been shown.
6. The evidence before the respondent, and which the First-tier Tribunal considered, consisted of a letter from HMRC setting out the income declared in each of the 5 tax years before that date. That letter shows that in 2013/2014 the husband declared no income at all to HMRC. That was the evidence before the First-tier Judge.
7. There may be further evidence underlying the August 2017 refusal letter, but the appeal against that letter is not before me and the evidence relied upon did not form part of the respondent's decision in this appeal.
8. In relation to the evidence which was before the First-tier Judge and the decision which was under challenge at the hearing before the First-tier Judge, the grounds for appeal are unarguable and I dismiss the appeal.

Conclusions

9. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law I do not set aside the decision but order that it shall stand.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 9 September 2018