Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01184/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Oral determination given following hearing	
On 24 November 2017	**On 28 February 2018**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

BEN ALLASSANE COULIBALLY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of the Ivory Coast who arrived in this country in or around 2006 where he remained, certainly for some of the period without leave, until on 26 June 2010 he married a French

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national who was exercising treaty rights in this country. He was granted a residence card on 16 December 2010. The marriage broke down and his wife left the matrimonial home in December 2011. However, they did remain married until their divorce on 2 March 2015. Subsequently, in July 2015 the appellant applied for a permanent residence card under the provisions set out within the Immigration (EEA) Regulations 2006. It is, and has always been, agreed between the parties that at the date of dissolution of the marriage the appellant was himself a worker for the purposes of the Regulations, that he and his former wife had been married for over three years and that he had been living in this country at a time when his now ex-wife was also living in the country for a period in excess of one year. It is established in jurisprudence that the couple would not have been required to live together for the requirements under the Regulations to be satisfied. Accordingly, the only other requirement which needed to be satisfied before this appellant would be entitled to a permanent residence card was that at the date of the dissolution of his marriage his ex-wife was exercising treaty rights.

2. To this end the appellant submitted various documents to the Home Office, including documents purporting to be income tax returns which had been submitted to HMRC by his ex-wife during the years 2011 to 2015. As I noted in a previous decision which I made (to which reference will be made below and a substantial amount of which is incorporated into this decision) the respondent did not accept that these documents were genuine, although she did not appear to make an explicit finding to this effect. However, due to an implicit finding to this effect the application for a permanent residence card was refused.

3. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Burns sitting at Taylor House on 3 April 2017. In a Decision and Reasons promulgated just over two weeks later on 20 April 2017, Judge Burns dismissed the appellant's appeal. While it was accepted within the decision that the only live issue was whether or not the appellant's former wife was a "worker" for the purposes of this Regulation (and if she was she was exercising treaty rights) the judge's decision was also predicated on an implicit although not explicit finding that the documents could not be relied upon.

4. The appellant was given permission to appeal against this decision and the appeal came before me on 24 August 2017 when I found that Judge Burns' decision had contained an error of law such that the decision needed to be remade by the Upper Tribunal. I was particularly concerned that the judge had relied upon a decision of the Court of Appeal in *Amos v SSHD* [2011] 1 WLR 2952 as authority for the proposition that it was not the respondent's duty to enquire of HMRC as to whether or not the documents submitted by the appellant purporting to be copies of her revenue returns were genuine or not. The reason why I considered Judge Burns to be wrong in this case was that this was not a case such as was the position in *Amos* where the appellant had no evidence and sought the assistance of the Secretary of State to obtain evidence which she did not have; rather this was a case

where the appellant had provided evidence but where the respondent was seeking effectively to persuade the Tribunal that that evidence was not genuine. In these circumstances the course the judge should have followed (which was the course I followed in the previous hearing) was to direct the respondent that if she was not satisfied that the documents submitted were genuine she should request the Revenue to inform her whether or not the documents were indeed genuine, which she had the power to do pursuant to Section 40 of the UK Borders Act 2007. Accordingly I made an order to this effect.

5. Before me at the hearing today on behalf of the respondent Mr Singh, representing the respondent, informed the Tribunal that the records provided by the appellant had been checked by HMRC and that it had been confirmed that his ex-spouse was in fact exercising treaty rights throughout the period, including at the date of divorce, and that accordingly that reason for refusing to grant a certificate of permanent residence fell away and the appeal should be allowed.

6. It follows that this appeal must be allowed and I will so order.

Decision

The decision of First-tier Tribunal Judge Burns, dismissing the appellant's appeal is set aside and the following decision is substituted:

The appellant's appeal is allowed, under the EEA Regulations.

Signed:

Upper Tribunal Judge Craig Dated: 22 February 2018