



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/03663/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8th December 2017**

**Decision & Reasons Promulgated
On 7th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR VITALIY MAHERA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (Counsel)

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse to issue him with a permanent residence card, as the former spouse of an EEA national, was dismissed by First-tier Tribunal Judge Moore ("the judge") in a decision promulgated on 6th September 2017.

2. In an application for permission to appeal, it was contended that the judge erred in making inconsistent findings. The decision contained a clear finding that the EEA national relied upon by the appellant was economically active in the United Kingdom prior to and at the point of divorce. The decision also contained a finding that the same EEA national had not provided credible and reliable evidence showing that she was economically active during the same periods of time. Permission to appeal was granted by a First-tier Tribunal Judge on the basis that the judge appeared to have reached contradictory conclusions. In a Rule 24 response prepared on behalf of the Secretary of State, the appeal was opposed.

Submissions on Error of Law

3. Mr Karim drew attention first to paragraph 21 of the decision. At the end of that paragraph, the judge made a finding that the appellant's former spouse was economically active in the United Kingdom, "both during and at the time of divorce." In that same paragraph, but over the page, on page 9 of the decision, the judge found that he was "not satisfied that credible and reliable evidence has been provided demonstrating that the appellant's former spouse was economically active at the time of divorce, and in those circumstances was exercising treaty rights at that time." The findings were contradictory.
4. Mr Mills said in reply that the Secretary of State accepted that there was a clear contradiction. The Rule 24 response was prepared on the basis of preliminary consideration of the grounds of appeal and did not amount to a full or considered response. It was clear that paragraph 21 of the decision contained a finding that the judge was satisfied that relevant requirements were met and then, subsequently, that he was not so satisfied. It might perhaps be said that the reasoning in relation to the adverse finding was sufficient to enable a finding that the error of law, if shown, was immaterial.
5. Mr Karim said in response that a close reading of the decision showed that equally detailed reasons were present for each of the findings.

Conclusion on Error of Law

6. I accept Mr Karim's submission that paragraph 21 of the decision does contain reasons, clearly set out, supporting each of the findings of fact made by the judge. The first part of paragraph 21 is an assessment of the evidence leading to the finding that the former spouse was economically active in the United Kingdom, at relevant times. In that same paragraph, but further along, the judge draws attention to aspects of the evidence given by the former spouse and to certain features of the documentary evidence, leading in due course to the adverse finding. In summary, a sensible reading of paragraph 21 does reveal contradictory findings. At

the end of the hearing, I announced my conclusion that the decision of the First-tier tribunal must be set aside and remade.

7. In a brief discussion of the appropriate next step, Mr Karim said that he was content to resume the hearing and that the adverse findings should not stand. Evidence might be heard. Mr Mills said that the contradictory findings were such that the better course was to remake the decision, having first set it aside, and that no findings made by the judge should stand. Mr Karim said that, on reflection, he was content for the decision to be remade in the First-tier Tribunal. I agree that that is manifestly the appropriate venue.
8. The decision of the First-tier Tribunal set aside. The decision will be remade in the First-tier Tribunal at Taylor House, for a judge other than Judge Moore. No findings of fact are preserved.

Notice of Decision

The decision of the First-tier Tribunal is set aside, as containing a material error of law. It will be remade in the First-tier Tribunal, before a judge other than Judge Moore.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

No anonymity order or direction has been made and none has been applied for. I make no order or direction regarding anonymity on this occasion.

Signed

Date

Deputy Upper Tribunal Judge RC Campbell