



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04015/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12th February 2018

Decision & Reasons Promulgated
On 22nd February 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

INDERJIT SINGH
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr Z Nasim, of Counsel, instructed by Lamptons Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of India born in 1992. He applied for a permanent residence card as the former spouse of Ms Sima Tuzinaite, a Lithuanian citizen. His application was refused on 31st March 2017. His appeal against the decision was allowed by First-tier Tribunal Judge C H O'Rourke under the EEA Regulation in a determination promulgated on the 10th November 2017.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on 7th December 2017 on the basis that it was arguable that the First-tier Tribunal had erred in law in finding that the claimant was entitled to permanent residence.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal the Secretary of State accepts that the claimant and his ex-wife were lawfully and genuinely married; that the claimant's ex-wife was working at the point of the divorce; and that the claimant has shown he was working as required by the relevant EEA Regulations. It is argued however that the claimant is not entitled to permanent residence as the evidence with respect to the ex-wife's work showed insufficient earnings for the period end of October 2012 to 5th April 2013, and thus that the finding that the claimant met Regulation 15(1)(f) of the Immigration (EEA) Regulations 2006 was not lawfully open to the First-tier Tribunal. Mr Bramble accepted that that the evidence before the First-tier Tribunal showed that the claimant's ex-wife had earned £258 per month from a cleaning job during this time. The question was whether this showed the claimant's ex-spouse was genuinely working as a cleaner during this period.
5. Mr Nasim submitted that in accordance with the decision in Begum (EEA – worker –jobseeker) Pakistan [2011] UKUT 275 this was sufficient as in EU law whether someone was working was not conditional on the amount of income derived. The question was whether the work was "effective and genuine" and not "marginal or ancillary" and thus having no economic value. The letter from the claimant's ex-wife's employer at page 135 of the bundle shows that she was genuine working in a job which had economic value as a cleaner/ room attendant from October 2012.

Conclusions – Error of Law

6. I find that although the decision that the appellant is entitled to permanent residence under Regulation 15(1)(f) of the EEA Regulations is not fully reasoned at paragraph 25 of the decision that there is no material error of law in the decision as the evidence before the First-tier Tribunal was such that the claimant's ex-wife was clearly a worker during the full five year period, including the period October 2012 to April 2013, as she was doing work which was genuine and effective during this time as her cleaning work was genuine and had economic benefit to her employer, and at no point in time was that work on such a small scale as to be marginal or ancillary.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. The decision of the First-tier Tribunal allowing the claimant's appeal under the EEA Regulations and finding the claimant was entitled to permanent residence is therefore upheld.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 19th February 2018