



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05940/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

MONICA LARYEA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel instructed by Tice Madox Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Ghana born on 4th August 1962. After a number of unsuccessful applications, on 24th November 2015 the Appellant applied for a permanent residence card as a confirmation of her right to reside in the UK. That application was refused for the reasons given in a Notice of Decision dated 6th May 2016. The Appellant appealed and her appeal was heard by Judge of the First-tier Tribunal G Clarke (the Judge) sitting at Hatton Cross on 10th October 2017. He

decided to dismiss the appeal under the provisions of the Immigration (European Economic Area) Regulations 2006. The Appellant sought leave to appeal that decision and on 6th February 2018 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge decided to dismiss the appeal because he found that the Appellant had not shown that she retained rights of residence as a family member of an EEA national under Regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 (the Regulations). In particular, the Judge found that he was not satisfied that the Appellant's marriage had broken down owing to domestic violence, nor that her Sponsor remained a qualified person owing to his economic activity. The Judge noted that the Respondent had declined to make enquiries from HMRC under Section 40 UK Borders Act 2007. The Judge took into account a Home Office Policy entitled "Free movement rights: retained rights of residence, Version 3.0" published on 7th February 2017.
4. At the hearing before me, Mr Khan argued that the Judge had erred in law in coming to this conclusion. He relied upon one narrow issue which was that this case clearly fell within the parameters of Section 40 of the Act and that the Respondent should have requested information from HMRC. Overlooking this failure was an error of law by the Judge.
5. In response, Ms Isherwood argued that there had been no such material error of law. The Judge had considered all the relevant evidence and had come to the correct conclusion that the Appellant had failed to show that her marriage had broken down as a consequence of domestic violence. The fact that the Judge had failed to consider the correct Policy of the Respondent was immaterial because the 2011 version of the Policy was not different in any material respect as far as the Appellant's circumstances were concerned. The Judge considered the provisions of Section 40 of the Act and correctly concluded at paragraph 27 of the Decision that the Respondent was under no obligation to make enquiries from HMRC as the Appellant had not separated from the Sponsor as a result of domestic violence. He was right to find that the Policy of the Respondent did not apply. The Judge noted at paragraph 29 of the Decision that the Appellant had not shown that she had taken reasonable steps to locate the Sponsor.
6. I find no material error of law in the decision of the Judge which I therefore do not set aside. As Mr Khan said in his submission, the Appellant relies upon one narrow point which is that the Judge failed to take account of the fact that the Respondent had not exercised her discretion and sought information from HMRC concerning the employment of the Sponsor in accordance with the appropriate Home Office Policy. However, as Ms Isherwood pointed out, the Judge dealt with this issue at paragraphs 27 and 29 of the Decision. It cannot be said that the Judge overlooked the point and his decision in respect of it has not been impugned and I find it to be properly made.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 20th May 2018

Deputy Upper Tribunal Judge Renton