



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/10487/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27<sup>th</sup> March 2018**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> April 2018**

**Before**

**UPPER TRIBUNAL JUDGE CHALKLEY**

**Between**

**MISS TEMITAYO ADEOLA MARBLE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S. Ferguson of Counsel instructed by Okafor & Co Solicitors

For the Respondent: Ms Z. Ahmad a Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria who was born on 31<sup>st</sup> January 1980, and who arrived in the United Kingdom on the basis of her marriage in August 2011. She was issued with a residence card on 26<sup>th</sup> October 2011, with an expiry date of 26<sup>th</sup> October 2016. The residence card was revoked because she was no longer living with her family member. The appellant claimed that she married a French national on 6<sup>th</sup> November 2010, and that sadly they divorced on 12<sup>th</sup> October 2015. She maintained that at the time of their marriage and since the divorce, both she and her French

national former husband have been working and, therefore, that her former spouse has been exercising treaty rights in the United Kingdom.

2. The respondent having revoked the appellant's residence card, the appellant appealed to the First-tier Tribunal. Her appeal was heard at Newport on 13<sup>th</sup> July 2017, by First-tier Tribunal Judge Suffield-Thompson. She dismissed the appeal.
3. The appellant challenged the judge's determination. Throughout her determination the judge appears to assume that the appellant is required to demonstrate that both she and her former spouse are continuing to exercise treaty rights in the United Kingdom, whereas in fact, of course, it was only necessary for the appellant to demonstrate that her Sponsor husband had been exercising treaty rights at the time of their marriage and at the time of the divorce.
4. There was evidence in the appellant's bundle from HM Customs and Revenue, which effectively demonstrated that the appellant met the requirements of the Immigration Rules, because clearly at all material times her former spouse was exercising treaty rights as an EEA national.
5. At the hearing before me Ms Ahmad confirmed that she was satisfied that the appellant's former spouse was exercising treaty rights at all relevant times. In the circumstances, **I am satisfied that the decision of First-tier Tribunal Judge Suffield-Thompson does contain a material error of law. I set aside her decision** and remake the decision myself.
6. I therefore **allow** the appellant's appeal.

***Richard Chalkley***

Upper Tribunal Judge Chalkley

**Date: 11 April 2018**

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal. I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable for the following reason. The appellant's appeal was successful.

***Richard Chalkley***

Upper Tribunal Judge Chalkley

**Date: 11 April 2018**