



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

Appeal Number: EA/13002/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 September 2018**

**Decision & Reasons  
Promulgated  
On 5 November 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**AFEEZ ABIOLA ADEYEMI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision sent on 29 March 2018 Judge Boyes of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Nigeria, against a decision made by the respondent on 17 October 2016 refusing to grant him permanent residence.

2. The file shows that the appellant was sent notice of appeal at his last known address. He has not provided any explanation for his failure to appear before me. In such circumstances I decided to proceed with the hearing in the absence of one of the parties and I heard briefly from Ms Willocks-Briscoe.
3. The appellant's grounds sought to argue that he was entitled to succeed in his appeal because he had taken reasonable steps to provide documentary evidence including the fact that he had commenced divorce proceedings.
4. I have no hesitation in rejecting the appellant's grounds; indeed, I struggle to understand why permission to appeal was granted by Judge Hollingworth. In order to succeed in his appeal the appellant would have to show that his EEA national spouse had been exercising Treaty rights for five continuous years. He cannot rely on regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 because at the date of the hearing he was still not divorced. Their marriage took place on 1 May 2010. The evidence produced by the appellant to support his claim that his partner had been exercising Treaty rights for five continuous years at best demonstrated that she was employed between 2010-2013. The appellant failed to produce any satisfactory evidence to show that his wife was either resident in the UK or exercising Treaty rights between 2014 - to the date of hearing. He also failed to demonstrate that he had taken all reasonable steps to obtain evidence relating to his wife's employment for the requisite period. Even if (as the appellant argued) he could rely, in order to trigger retained rights, on the fact that he commenced divorce proceedings in April 2017, that does not assist him since there is still a substantial gap of approximately four years. The judge was indubitably right to dismiss this appeal.

### **Notice of Decision**

5. For the above reasons I find that the appellant's grounds are not made out and accordingly the decision of Judge Boyes must stand.
6. No anonymity direction is made.

Signed

Date: 25 October 2018



Dr H H Storey  
Judge of the Upper Tribunal

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

The appeal is dismissed and therefore there can be no fee award.

Signed

Date: 25 October 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a loop at the end of the word "Storey".

Dr H H Storey  
Judge of the Upper Tribunal