



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00413/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 September 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

UPPER TRIBUNAL JUDGE MARTIN
UPPER TRIBUNAL JUDGE KEBEDE

Between

MISS HENA TABASSUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Litchfield (instructed by Law Lane Solicitors)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant in relation to a Decision and Reasons of Judge Fowell in the First-tier Tribunal, promulgated on 25 June 2019.
2. The appellant is a citizen of Pakistan, born on 23 October 1986. She had appealed a decision of the Secretary of State, taken on 14 January 2019, to refuse her application for permanent residence under the EEA Regulations.

3. The appellant had made an application under regulation 15(1)(f) on the basis that, being a person with a retained right of residence, she had resided continuously in the United Kingdom thereafter for five years and was entitled to permanent residence.
4. The application was refused on the basis that, although she had been granted previously a residence card on the basis of having a retained right of residence, that was in error and the Secretary of State was not now satisfied that her EEA national former spouse had been exercising treaty rights at the date of the divorce. There was said to be a gap in the evidence of her former husband's earnings between April 2016 and April 2017.
5. The judge in considering that issue noted the gap in the documentary evidence and was unable to find that the former husband had been exercising Treaty rights either at the time the divorce was initiated or indeed when it formally ended. He found there was no evidence that he had been exercising Treaty rights in the UK at any time after 5 April 2016, over a year before the divorce and dismissed the appeal.
6. The grounds upon which permission to appeal to the upper Tribunal was granted argue that the judge erred in failing to consider, in the alternative, that there was evidence that the appellant's former husband had acquired a right of permanent residence and accordingly Regulation 10(5)(a) applied.
7. Before us Mr Bramble conceded there was clearly an error of law in that there was an issue to be decided as to whether that the EEA spouse had accumulated five years and thus a right to permanent residence in which case the later gap with regard to his earnings was irrelevant. The judge had not considered that point and he indicated that the notes of hearing from the Home Office Presenting Officer before the First-tier Tribunal indicated that that had been an issue.
8. Having conceded that there was an error of law in the decision, it was agreed that it should be set aside. It was then agreed that we should proceed immediately to redecide the matter on the basis of the evidence before us. The evidence that we had indicated that from 2010 the EEA national had been working and tax records from 2011 show that he had been continuously working until April 2016. There was no evidence that he had left the UK at any time. That being the case and in the absence of any evidence to the contrary, Mr Bramble accepted and we are satisfied, on a balance of probabilities, that the EEA national had acquired permanent residence prior to the divorce and thus the appellant was entitled to succeed under regulation 10(5)(a).

Decision

9. The First-tier Tribunal having made a material error of law in its Decision and Reasons, as set out above, the Decision and Reasons promulgated on 25 June 2019 is set aside.
10. We redecide the appeal and allow it under the EEA regulations.

11. There was no application for an anonymity direction, and we see no justification for making one.

A handwritten signature in black ink, appearing to read 'Martin', written in a cursive style.

Signed

Date 19 September 2019

Upper Tribunal Judge Martin