



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01083/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 3 December 2018

Decision & Reasons Promulgated
On 9 January 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

ZABEEH ULLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Logan, R & A Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal (FtT) dated 26 April 2018. In that decision the FtT accepted all the relevant requirements of the Immigration (EEA) Regulations 2016 had been met save one. The only issue that the FtT found against the appellant was a failure to provide a valid national identification card or passport for his spouse. The FtT was satisfied that the relevant EEA national spouse was exercising treaty rights at the date of divorce and that the appellant was exercising Treaty rights at the relevant time but went on to dismiss the appeal for the reason I have provided.

2. In grounds of appeal prepared on behalf of the appellant it was argued that the FtT erred in law in requiring him to provide a certified copy of identity documents given the particular circumstances of this case. Permission to appeal was granted by FtT Judge Simpson. She noted the relevant background included the following: the appellant's marriage irretrievably broke down and there was a lack of amicable relations between the parties; the ex-wife had only agreed to provide him with a copy of her identification card; the appellant had previously been granted a residence card on 13 January 2014 in respect of the self-same EEA national when the respondent would have had sight of their identification document. Judge Simpson also drew attention to the provision in the Regulations to the effect that the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person's control. Judge Simpson observed that there was an arguable failure to take this provision into account, and this was compounded by the FtT's expectation that the copy of the identification document the appellant did produce for his ex-wife should have been by way of certified copy from a solicitor or like professional.
3. At the hearing before me the parties agreed that the FtT's decision contains an error of law as identified by FtT Judge Simpson when granting permission to appeal. Mr McVeety also pragmatically accepted that there is now clear and cogent evidence of the relevant identification of the EEA national in question such that it is conceded that this appeal against the decision of the FtT should be allowed and that I should remake the decision by allowing the appellant's appeal. Given that clear concession there is no need for me to give any further reasons save to observe that I entirely accept that Mr McVeety has done the correct thing in conceding the appeal in the manner that he has.
4. The decision of the FtT contains an error of law and is set aside. I re-make the decision by allowing the appellant's appeal.

Signed

Dated

Upper Tribunal Judge Plimmer

20 December 2018