



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

Appeal Number: EA/06693/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17 April 2019
Extempore**

**Decision & Reasons Promulgated
On 09 May 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MS RAHEMAT NATASHA DAVIES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Adojutelegan

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge M A Khan promulgated on 19 July 2018 dismissing her appeal against a decision made on 27 June 2017 to refuse her application for a document confirming her right of residence in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2016.
2. The appellant's case is primarily that she was married for a number of years to an EU national and that he was employed during the tax years 2003/4 to 2008/9 when she was divorced, his employment being for a continuous a period of five years.

3. The judge did not accept the evidence produced to him which is in the form of a series of letters from HM Revenue & Customs setting out in significant detail her former husband's history of employment.
4. There has been a long history to this case, in that the appellant's divorce was in 2008 and there had been numerous unsuccessful applications subsequent to that. It is necessary to record that those decisions were reached on the basis of considerably less evidence than has now been made available. No issue has been taken to that by the respondent.
5. The judge reached his conclusions for the reasons set out at paragraphs [23] to [25] of his decision. In summary, he found that the only evidence in support of the application was National Insurance contributions said to have been made by the former spouse. Although he does refer to the documents which appear at pages 111 to 119 of the bundle which are the letters from HM Revenue & Customs referred to previously, he refers to them as not covering the tax year 2003 to 2004. He also noted that there was no evidence to demonstrate that the former EEA national husband was in any meaningful economic activity, stating even were he to accept that the appellant's husband was self-employed, the evidence in the form of National Insurance contributions and tax allowance is solely for a limited period and the divorce took place on 18 February 2008.
6. The appellant sought permission to appeal against these decisions on the grounds that the judge had erred:
 - (a) in his approach to evidence, specifically that he had not properly assessed it both in terms as to the period covered which extended from 2003/4 tax year; and,
 - (b) in that he had wrongly stated that there is no evidence to demonstrate that the former husband was in meaningful economic activity and made factual errors which contributed to these errors. It is also submitted that the documentary evidence provided showed that the former husband had been exercising treaty rights and earning at a level such that it was above the minimum earnings threshold for national insurance and that he erred in concluding that these were marginal and ancillary and insufficient to amount to proper work or employment.
7. Permission to appeal was granted by the Upper Tribunal on 11 December 2008, Judge Grubb noting that the documents from HM Revenue & Customs at pages 111 to 129 of the bundle appeared to disclose income and tax liability accepted by HM Revenue & Customs for the spouse at the relevant period.
8. I am satisfied that the judge did err as is set out in the grounds. He failed to note that the documents in question covered the tax year 2003/4, and he failed to explain why he did not accept the evidence, given that it came from HM Revenue & Customs. He improperly required there to have been documentary evidence, such as the bank statements which would not

have been available at this period nor is it likely they would be available to the appellant.

9. The judge also failed to note that National Insurance contributions are indicative of certain levels of income as was clear from the documents and failed to engage with the level of income in relation to the relevant National Insurance and income tax thresholds in reaching his conclusion in the alternative that there was insufficient evidence of genuine and sufficient economic activity.
10. Accordingly for those reasons the decision was set aside. When I did so on 31 August 2018 I gave directions for the appellant to provide any additional evidence if it existed and also to provide a table setting out in each of the relevant tax years in separate columns how the level of national insurance contributions and income tax with relevance to the relevant thresholds at the time. I am grateful to the appellant's solicitors for producing that table within a short period of time and it is on that basis that I remake the decision.
11. I am satisfied from the documents provided that the appellant's former husband was economically active through employment and/or self-employment for the five year period prior to the date of divorce. Mr Tarlow made no submission to the contrary in the light of the documentary evidence. It is not in dispute that the appellant was in employment at the date of divorce or thereafter and in the circumstances I am satisfied that all the requirements of the Immigration (European Economic Area) Regulations are met.
12. Accordingly I am satisfied that the appeal should be allowed on the basis that the appellant has shown on the balance of probabilities that she has acquired a permanent right of residence.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside
2. I remake the decision by allowing the appeal under the Immigration (European Economic Area) Regulations 2016

Signed

Date 2 May 2019



Upper Tribunal Judge Rintoul