Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49106/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
on 23 May 2014	**On 27th May 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NAVEED AHMAD MAJEED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Nazir
For the Respondent: Mr Mullen

No anonymity order requested or made

DETERMINATION AND REASONS

1) The appellant is a citizen of Pakistan, born on 4 January 1984. He appeals to the Upper Tribunal against a determination by First-tier Tribunal Judge P A Grant-Hutchison, promulgated on 19 February 2014, dismissing his appeal against refusal of a residence card.

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2) The grounds of appeal to the UT are as follows:

…

1. Only issue involved was whether or not the appellant has retained a right of residence following his divorce from Radca Mihaylova, a Bulgarian national, under regulation 10 of the Immigration (European Economic Area) Regulations 2006. The Respondent refused the application on two grounds: (i) there was no evidence that the EEA national was a qualified person and that the appellant was therefore residing in accordance with the Regulations at the point of divorce; (ii) that there was no evidence that since the date of the divorce the appellant has been a worker, a self-employed person or a self-sufficient person.

   The judge accepted it that there was evidence to prove that the appellant was working since the date of divorce. Thus the only issue left was the first one and he dismissed the appeal.

   The submissions, with respect, are:

   It appears that the appellant satisfied all the conditions stated in the paragraph 10, except that the Respondent refused the application and the judge dismissed the appeal under Regulation 10(5)(b), which reads:

   A person satisfies the conditions of this paragraph if:
   (b) he was residing in the United Kingdom in accordance with Regulations at the date of the determination.

   … the Respondent and the judge did not mention the relevant sub-rule which they were determining.

   … the Judge erred when he dismissed the appeal in three short sentences (paragraph 12 of the determination):

   However the Appellant has failed to prove that he was married to a qualified person at the relevant time. I accept that during a marriage break up it may be difficult for him to obtain proof that the qualified person was indeed working – yet it is of importance that he does so. This is the essence of the Appellant's case.

   The Judge erred in law when he ignored the evidence which was submitted to the Respondent. In the Reasons for Refusal Letter it is mentioned that the appellant did provide evidence of National Insurance Contributions for 11 October 2009 to 10 July 2010, a Copy of a Tax Calculation Overview for the year ending 5 April 2010 and current account Bank statements for 2009, 2010 and 2011.

   If the above evidence is seen in conjunction with the comments by the Judge that during a marriage break-up it may be difficult for the appellant to obtain relevant proof that the qualified person was working, then the only conclusion that could be drawn is that the appeal should have been allowed.

   One wonders whether it is possible to ask the wife just before the divorce decree to provide the wage slips.

   … there is no express provision under Regulation 10 that an applicant should provide evidence to prove that the ex-wife was working on the date of the divorce. Secondly, as the judge said, it is difficult to obtain.

2. The judge also erred when he did not consider with reasons the appellant's Article 8 rights under the new Immigration Rules.

> It is not in dispute that the appellant has been in the UK since 7 September 2005. He was a lawful entrant and is not an overstayer. Furthermore, as many years have since elapsed since he left his country he cannot be expected to have any social, family and cultural ties with his country … at least the Judge should have touched these issues and his omission renders the determination unsustainable.

3) Mr Nazir said the judge failed to give reasons for finding that the appellant had not shown that his former wife was exercising treaty rights at the date of the divorce, and failed to refer to the evidence before him. At page 75 of the appellant’s bundle in the First-tier Tribunal was a self-assessment statement from HMRC addressed to the appellant’s former wife, dated 14 May 2013. This shows that she appealed against a late filing penalty for the tax year to 5 April 2011. The date of divorce was 19 November 2013. The evidence suggested that the appellant’s ex-wife had also made tax returns for the years 2011/2012 and 2012/2013. The error was such that the decision should be reversed.

4) Mr Mullen accepted that the judge did not refer specifically to the HMRC letter of 14 May 2013, but he said that was not material. The other evidence in the bundle was of earlier dates, and showed only that small amounts had been due in respect of national insurance in 2009 and 2010. There was no evidence of economic activity of the appellant’s ex-wife to any meaningful level at any date. None of the documents suggested economic activity beyond the tax year 2010/2011. The latest document to which the appellant could refer (14 May 2013) showed a zero balancing payment due for the year 2011/2012, which meant no activity. At best the appellant’s ex-wife might have been a qualified person to year ending 5 April 2011, but not thereafter. There was simply no evidence on which an outcome in favour of the appellant might be sustained.

5) Mr Nazir in reply submitted that the evidence did show that the appellant’s ex-wife had been working, even if at a low level. The appellant encountered a common difficulty of obtaining evidence from an unco-operative former spouse, but such evidence as there was tended to show that she had continued to be a qualified person.

6) At this stage, Mr Nazir acknowledged that further evidence would be required to establish the appellant’s case. He said that there is evidence now available which was not before the First-tier Tribunal, which the appellant has obtained “through an intermediary”. Mr Nazir was unable to explain specifically how the further evidence had been obtained, or why it had not been available at an earlier date.

7) I reserved my determination.

8) There was no evidence before the First-tier Tribunal by which the judge could reasonably have held that the appellant’s former spouse was exercising free movement rights in the UK at the time of divorce.

9) Even if there is some evidence by which the appellant might prove his case now, it has not been shown why that evidence was not previously available, or that it could not reasonably have been available by the time of the First-tier Tribunal hearing. It seems that Mr Nazir appears on an agency basis for a representative in Manchester. I have noted that there is on the file a set of documents of 41 pages, some of which seem to be designed to go to economic activity of the appellant's ex-wife at dates later than shown by the documents before the FtT. However, there is no supporting application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Procedure Rules 2008, and no information within the documents from which such an application might be inferred.

10) The appellant has the option of making a fresh application to the respondent. Mr Nazir acknowledged that, but said that in the meantime the appellant had no valid residence card and that it might be a time-consuming process. Those are not points which can help to establish error of law in the First-tier Tribunal.

11) The determination of the First-tier Tribunal shall stand.

27 May 2014
Judge of the Upper Tribunal