



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

Appeal Number: EA/03256/2015

THE IMMIGRATION ACTS

Heard at Field House

On 11 January 2018

**Decision & Reasons
Promulgated**

On 15 January 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**IMRAN HANIF
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, Counsel instructed by Haris Ali Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant challenges the determination of First-tier Tribunal Judge Keane promulgated on 20 March 2017 dismissing his appeal against the respondent's decision of 14 November 2015 to refuse to issue him with a permanent residence card under reg. 15(1)(b) of the EEA Regulations.

2. The appellant is a national of Pakistan, born on 10 December 1978. He arrived in the UK for studies in May 2005 and on 11 February 2010 he married a Polish national and subsequently obtained a residence card on 6 December 2010, valid for five years. His marriage subsequently broke down and he was divorced on 10 January 2014. He made an application for permanent residence on 3 April 2014 but this was refused on 9 May 2014. The appellant lodged an appeal but it appears that the Presenting Officer withdrew the negative decision and a residence card was granted on 28 October 2014 on the basis of his retained rights of residence. On 25 June 2015, the appellant made an application for permanent residence; the refusal of that application gives rise to these proceedings.
3. Judge Keane was not satisfied that the appellant had shown that he had been residing in the UK in accordance with the Regulations for a continuous period of five years and dismissed the appeal.
4. Permission to appeal was granted by First-tier Tribunal Judge Brunnen on 9 October 2017 on the basis that the judge arguably disregarded documentary evidence to show the appellant had been employed since December 2012 and had failed to appreciate that a residence card had most recently been issued in October 2014.
5. The respondent, in her Rule 24 response, did not oppose the application for permission and invited the Tribunal to consider the appeal at a continuance hearing. The matter then came before me.
6. **The Hearing**
7. The appellant attended the hearing.
8. Mr Tufan confirmed the contents of the respondent's Rule 24 response.
9. The parties were agreed that the issue to be decided was whether the appellant had completed five years of continuous residence in accordance with the Regulations including a period prior to the breakdown of the marriage. On that basis, they were content to proceed with the hearing before me on the basis of submissions.
10. Fresh documentary evidence from the appellant was admitted under rule 15(2A) of the Upper Tribunal Procedure Rules 2008.

- 11.** Mr Dhanji then made his submissions. He submitted that the relevant five-year period was from January 2012 to January 2017 although the appellant continued to be employed by the same company even after that date. He took me through the documentary evidence to establish employment and referred to pay slips, P60s, letters from the appellant's employer and to bank statements showing salary deposits. He also referred me to evidence of employment in respect of the appellant's former spouse in the form of national insurance contributions, tax returns, letters from accountants and financial accounts. He submitted that when the respondent granted the residence card in October 2014, she would have had to have been satisfied that the provisions of reg. 10 (6) and that the appellant had himself been exercising treaty rights as an EEA national. He submitted that the evidence covered two years of marriage and three subsequent years and that the appeal should be allowed accordingly.
- 12.** Mr Tufan accepted there had been economic activity although he observed that employment may have been marginal on the part of the appellant's former spouse. Nevertheless, he accepted the evidence demonstrated economic activity and that the appellant had been exercising treaty rights himself.
- 13.** Mr Dhanji had nothing further to add in response.
- 14.** At the conclusion of the hearing I reserved my determination which I now give with reasons.
- 15. Findings and Conclusions**
- 16.** The respondent has properly conceded that Judge Keane made an error of law when assessing the evidence. It is plain that the judge did not have regard to all the evidence and that he erred as claimed in the grounds. His decision is consequently flawed and I set it aside.
- 17.** I now consider the evidence. As agreed by the parties the appellant has to show that he has been residing here for a continuous period of five years in accordance with the Regulations. The relevant period is defined as January 2012 - January 2017.
- 18.** Section B of the bundle contains the following documentary evidence:
 - payslips for the appellant covering the period of October 2014-January 2017 (pp. 68-93)

- Letter from employer dated 14 April 2015 confirming employment since 3 December 2012 (p. 96). This is also in Section A (p. 33A)
- P60s for the tax years ending 2015 and 2016 (pp. 94-95)
- Bank statements showing salary deposits for October 2014-January 2017 (pp. 102-156)

19. Section A contains the following evidence:

- Letter from employer dated 25 January 2017 confirming employment since 3 December 2012 (34A)
- P60 for the tax year ending 2014 (35A)
- Payslips covering January 2014 - April 2014 (35A-39A)
- Bank statements showing salary deposits for January 2014-April 2014 (40A-44A).

20. I am satisfied that these documents cover the period from January 2014 until January 2017 inclusive.

21. I turn next to the earlier period during the course of the appellant's marriage. The evidence for this is contained in Section B:

- Tax returns for the years ending 2010-2014 inclusive (pp. 241, 269, 273, 285 and 292)
- Financial accounts for the tax year ending 2010-2014 (p. 227-240)
- Letters from accountants dated 20 January 2014 and 29 September 2014 covering her trading activities for 2012-2014 (pp. 225-226)
- Payment of national insurance contributions for 2010-2014 (pp. 253-261).

22. I am satisfied that this evidence covers the period from 2010-2014 inclusive.

23. It follows that the appellant has shown evidence to cover more than a five-year period and that certainly for the period defined from January 2012 - January 2017 employment and residence has been amply demonstrated.

24. I also take account of the fact that when the respondent issued the last residence card in October 2014, she was satisfied that the appellant had shown retained rights of residence.

25. I take note of Mr Tufan's observation that the appellant's former spouse's employment appeared to be marginal however that was not

an issue taken by the respondent when the first two residence cards were issued and has not been raised as part of the current decision. I find that on the basis of the evidence before me, the provisions of reg. 15(1)(b) have been met.

26. Decision

27. The First-tier Tribunal made errors of law and I set aside that decision. I re-make the decision and allow the appeal under the EEA Regulations.

28. Anonymity

29. I was not asked to make an anonymity order and there is no reason to make one.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 12 January 2018