



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/45012/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 July 2014

Determination Promulgated  
On 30 July 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

IMRAN AHMED KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Kansal, Counsel instructed by Graysons Solicitors  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. It is not entirely clear whether the appellant is a citizen of South Africa or India but it is accepted he was born on 11 November 1985. He sought documentary acknowledgment that he had a retained right of residence in accordance with

Regulation 10 of the Immigration (European Economic Area) Regulations 2006. The material requirement for our purposes is a single one and that it was for the appellant and the appellant alone to satisfy the condition that “he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of that person. That required the appellant to establish that on 13 March 2013 which is the date that he was divorced his wife or former wife was a qualified person namely somebody who was working at the time. The decision that was made by the Secretary of State refusing to issue both a permanent residence card and also to acknowledge that he was qualified to receive a retained right of residence was made on 17 October 2013 and the decision-maker, having recited that there had to be evidence that the appellant’s EEA former spouse was exercising free movement rights in the United Kingdom at the time of divorce concluded, having looked at the material submitted to him, that the appellant had failed to satisfy those requirements. The conclusion was:

“You submitted payslips from your EEA national sponsor dated in 2007 which is not sufficient evidence of treaty rights being exercised until the point of divorce”.

2. In the appeal before the Immigration Judge the situation had somewhat changed. There was a bundle of documentary evidence which was submitted to which I shall return in due course. However, it is of importance to note the circumstances in which the judge came to determine this appeal. He noted in paragraph 2 that the appellant did not appear when the case was called on in the morning. He said:

“At the commencement of the hearing Mr Bhatoor of Messrs Riaz & Co Solicitors appeared before the court and completed the form required under Section 84 of the Immigration and Asylum Act 1999 indicating that he was representing the appellant. The court record did not show a representative firm. The appellant had had former representatives, AKL Solicitors, but they had been removed from the Tribunal record. Mr Bhatoor indicated that written authorisation to represent the appellant was not available at the Tribunal but was at his office. I put the case back in order for that authorisation to be received.”

3. When the case was resumed at 2:20 in the afternoon at Taylor House Mr Bhatoor did not appear and instead there was note indicating that another Counsel had been instructed but did not attend for personal circumstances and that Mr Bhatoor had been given the brief to represent the appellant. The note went on to say that the writer was aware that the appellant was not attending court because he had a hospital appointment and an adjournment was requested. It also stated that Mr Bhatoor had been told to withdraw in order to let the judge decide what the appropriate course of action should be. It is not in my judgment surprising at all that the judge in those circumstances proceeded to hear the appeal. The only firm of solicitors on the file, AKL Solicitors, had been removed from it. The appellant himself did not appear. There was no medical evidence and all that was suggested was that the appellant was not attending because he had a hospital appointment. No

details were provided of that hospital appointment and the judge recorded that he did not know when it had been booked. However he delayed the preparation of the determination to allow time for a medical certificate or letter to be received from the appellant to explain his absence. In fact, when the determination was signed off it was signed off on 28 April, almost a week after the hearing, in which time there had been an ample opportunity to submit documentary evidence to explain the bizarre proceedings which had taken place on 22 April 2014. No explanation was provided and accordingly the determination went out. There cannot be any suggestion in my mind that the judge erred in law in proceeding in the way that he did. He therefore was faced with a bundle of documents which ran from page 1 to page 37. However, in relation to the single issue which was of significance to the judge and is of significance to me, there was very limited material.

4. First, there was a P60 or a series of P60s. They related to Sarah Hafiz, the appellant's former spouse, from a company called Canvasbay Limited which indicated that in the year 2007 to 2008 the P60 revealed an income of £240. In the following year with the same company, 2008/2009, her salary had increased to £10,146 and in the subsequent year, 2009/2010, her employment with Canvasbay Limited had remained at about the same level, it was £10,503.96 for the year ending 2010. It dropped back in the year 2011, the P60 indicating that her earnings then were £8,645.40. None of these documents however assisted the judge in deciding whether the appellant's former spouse was working on 13 March 2013. The nearest he got to that was a P60 for the year ending 5 April 2012. This indicated a different employer identified as SI Clothing Limited of 24 Temple Building, Temple Road, Leicester. For the year ending 2012 there was said to be an income generated by her employment of £15,961.63, very close to £16,000 a year. However for the year ending 5 April 2013 the material year in establishing whether the appellant's former spouse was working on 13 March 2013, the P60 indicated that her income had dropped to £4,271.10 for that year approximately a quarter of what it was before. If her employment had continued at the same rate as it had done for the year ending 2012 and she had been working the same hours and at the same level of pay, it would indicate that she had only been working for about three months of the year. Of course it did not say which three months of the year but if her employment had continued from 5 April 2012 it would indicate that she only earned for approximately three or four months and that period of employment would have ended sometime in the summer of 2012. It did not indicate that she was working on 13 March 2013, indeed quite the contrary if anything it indicated that her employment had ceased sometime prior to 5 April 2013.
5. There was however also a letter from SI Clothing Limited. The letter was described by the judge in paragraph 35 as being of extremely poor quality, it had been produced on an ordinary word processor, it is not on headed notepaper, the formatting of the name of the company and address are extremely uneven for an amateurish, it only has a mobile phone number and no landline. That is exactly correct. I have seen a copy at page 23 of the bundle and the parties have been provided by me with copies of that letter and it is exactly as the judge described. It

purports to be dated 24 January 2014 and it refers to the appellant's former spouse, provides a national insurance number and says;

"I am director of S I Clothing Ltd confirm that Mrs Sarah Hafiz employed as machinist from 07005-2011. This is full-time and permanent job."

It is signed by a Director, Mr S G Patel.

6. The reference to full-time and permanent job sits very uneasily with the two P60s for the years 2012 and 2013 respectively. If she was working full-time and permanently in 2012 earning £15,961 it is difficult to reconcile that with a P60 dated for the year ending 5 April 2013 where her earnings had dropped to £4,271. If this was indeed a full-time and permanent job since 2011 then no explanation is provided for that. So if those two pieces of material, the P60s and the letter from SI Clothing Limited were the only material upon which the First-tier Tribunal Judge was required to reach a decision he was entirely justified in saying that he was not satisfied the appellant's former spouse was working on 13 March 2013. There is something of a red heron in relation to the documents which were before the judge because he accepted that the respondent's bundle had not been provided but the respondent's bundle, it has never been suggested, contained documents which went to this issue. It was for the appellant to prove his case and to do so by proving evidence that his former spouse was working on 13 March 2013. The documents that he submitted which were entirely documents which he was in a position to obtain were documents which did not support that position and nothing that the respondent had been provided with was suggested would prove the case. In those circumstances, given the absence of the appellant to give any explanations, the failure to provide any adequate medical evidence to explain his absence, the failure to make use of the opportunity provided by the judge for such evidence to be adduced later at a later stage after the hearing, the absence of a representative at a hearing and the subsequent withdrawal of Mr Bhattoo when he had originally appeared on the appellant's behalf entirely justified the decision made by the First-tier Judge that the appellant had failed to meet the requirements of the Immigration Rules. Inevitably it followed that the application for a residence card of any sort including a permanent residence card was to be dismissed and no Article 8 claim could subsist in the absence of such a right to remain.
7. My decision is that the Immigration Judge made no error of law.

Signed

Date

Upper Tribunal Judge Jordan