



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

Appeal Number: EA/00712/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 27 September 2017**

**Sent to parties on:
On 12 October 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR VICTOR OBIOMA UCHECHUKWU
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)
For the Respondent: Dr. Mynott (Legal Representative)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with permission, from a decision of the First-tier Tribunal (hereinafter "the tribunal") made after a hearing of 14 December 2016, whereupon it allowed the claimant's appeal against the Secretary of State's decision of 6 January 2016 refusing to grant him a residence card as confirmation of his right to reside in the United Kingdom as a non-EEA national family member with a retained right of residence.
2. Permission was sought and subsequently granted on the basis that the tribunal had failed to consider or at least satisfactorily resolve the issue as to whether or not the claimant's former wife had been exercising treaty rights for a continuous period of at least five years leading up to date the couple divorced which was 30 June 2015.

3. It is apparent from the tribunal's written reasons of 19 December 2016 (see paragraph 8) that, at the outset of the hearing, it sought to establish with the parties, with a proper degree of precision, what issues were and were not in dispute before it. It is clear that, although there was said to be an issue as to whether the claimant's ex-wife was exercising treaty rights at the time of the divorce (something which the tribunal went on to resolve in the claimant's favour) no issue was raised as to the previous five year period. So, that was not an issue which the tribunal had to resolve.

4. It is clear, from the rest of the written reasons, that what the tribunal did do was to go through the disputed issues which had been identified by the parties and to decide each one. Given that the question of the exercising or otherwise of treaty rights for a continuous period of five years was not an issue specifically raised before it, it cannot have erred in law in not dealing with it. Indeed, I suggested to the parties at the outset of the hearing, that that might be the position and Mr Diwnycz, for the Secretary of State, did not seek to dissuade me from that view.

5. In the circumstances I conclude that the tribunal did not err in law and, in consequence, its decision must stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, that decision shall stand.

No anonymity direction is made, none having been sought.

Signed:

Date: 11 October 2017

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

I make no fee award.

Signed:

Date: 11 October 2017

Upper Tribunal Judge Hemingway