



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01916/2015

THE IMMIGRATION ACTS

Heard at Field House
On 3 November 2017

Decision & Reasons Promulgated
13 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

NOSA MONDAY OBAWE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No representation

For the Respondent: Mr Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 27 June 1977 who divorced his Spanish national wife on 17 November 2014.
2. On 8 May 2015 he applied for a residence card as confirmation of his right to reside in the United Kingdom under Regulation 10(5) of the Immigration (EEA) Regulations 2006.

3. In a decision dated 13 October 2015 the application was refused on the basis that the Secretary of State did not accept that the appellant's ex-wife was exercising free movement rights in the UK at the time of the divorce.
4. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Monson. In a decision promulgated on 22 February 2017 the judge dismissed the appeal. The appellant is now appealing against that decision.
5. In order to support his claim before the First-tier Tribunal that his ex-wife was working at the time of the divorce the appellant adduced the following documentary evidence:
 - (1) Payslips covering the period between April and November 2014 from a company called Racingbrakes.Com Limited showing the appellant's ex-wife earning a regular monthly income of £644.
 - (2) A letter dated 26 October 2015 from a Mr Adegoke who identified himself as a general manager of Racingbrakes.Com Limited. The letter states that the appellant's ex-wife commenced working for the company on 6 April 2014 and gave a tax reference number for her.
 - (3) A P60 for the tax year ending 2015 showing an income for that year of £6,440 and a tax refund from previous employment of £0.01.
 - (4) A printout from Companies House showing Racingbrakes.Com's status as active.
 - (5) Printouts from several third party websites referring to Racingbrakes.Com and specifying its address.
6. The judge dismissed the appeal on the basis that he did not accept that Racingbrakes.Com Limited was genuinely trading in the period leading up to termination of the marriage and that the appellant's ex-wife was genuinely employed by them. The judge's reasoning for this conclusion is set out in paragraphs 17 and 18 of the decision. The judge stated in these paragraphs the following:
 - "17. I accept that there are no internal inconsistencies in the payslips or the P60. However, the level of remuneration which was purportedly being paid to the ex-wife was at a level such that the purported employer did not have to account to HMRC for either income tax or national insurance. So I attach little weight to the payslips and the P60 in circumstances where (a) there are no corresponding bank statements showing the sums in the payslips going into the ex-wife's bank account and (b) there is no documentary evidence of the company trading between April and November 2014, or subsequently.
 18. The appellant's credibility is undermined by the fact that he did not provide a contact number for the employer with his application. Moreover, there is inconsistency between what he said in his witness statement about how he obtained the employer's letter, as against what he said in his oral evidence. The

clear implication of what he said in his witness statement was that he had obtained the employer's letter by going to the employer's premises. In his oral evidence he said that he had obtained the employment letter from his ex-wife's cousin, who acted as an intermediary..."

7. The grounds of appeal argue that the judge applied a higher evidential threshold than required by drawing adverse inference from the lack of bank statements to match the appellant's ex-wife's payslips and from the absence of documentary evidence to prove the company was trading between April and November 2014. It is also argued that the judge failed to take proper account of the letter from the general manager of Racingbrakes.Com Limited.
8. Before me, Mr Obawe, who was unrepresented, reiterated the points made in the grounds. He also sought to introduce into evidence a document appearing to be from HMRC concerning his ex-wife's income both from employment and self-employment during the relevant period. This document was not before the First-tier Tribunal and the appellant clarified that he had only obtained it after the hearing. The appellant also claimed that the discrepancies identified by the judge between his oral and written evidence about obtaining the letter from his ex-wife's employer was due to a misunderstanding by his solicitors.
9. Mr Jarvis argued that the judge had considered all of the evidence that was before the First-tier Tribunal about Racingbrakes.Com Limited and it was for the judge to decide based on that evidence if the company was genuine. The judge was entitled to give weight to the absence of evidence showing the company was operating including the lack of an internet presence. Mr Jarvis noted that the judge had explicitly considered the letter from the general manager. He also stated that there were inconsistencies in the evidence about how the letter was obtained and the judge was entitled to give this weight. Mr Jarvis objected to the new evidence submitted by the appellant being admitted.

Consideration

10. The appellant submitted in support of his claim wage slips and a P60 from his ex-wife covering the relevant period. There is nothing on the face of these documents to indicate that they are not genuine.
11. The judge gave two reasons for attaching only little weight to the P60 and the payslips notwithstanding that they appeared on their face to be genuine.
12. The first of the two reasons is that there were no corresponding bank statements showing the sums in the payslips going into the appellant's ex-wife's bank accounts. The appellant's evidence, as summarised by the judge at paragraph 7 of the decision, was that his ex-wife had refused to communicate with him following the break up of the relationship. The judge has not made a finding as to whether or not he accepts this is true. If it is true, then it would explain the absence of corresponding bank


statements because the appellant would have no way of obtaining them. If the appellant has a good reason for not being able to obtain his ex-wife's bank statements (and on the face of it he does) then the absence of these in the evidence is not a basis for attaching little weight to the P60 and wage slips.

13. The second reason the judge gave for not attaching weight to the P60 and wage slips is that there was no documentary evidence of the company trading between April and November 2014, or subsequently. However, the appellant submitted several documents which indicate the company was trading. At page 31 of the appellant's bundle is a printout from Companies House stating that Racingbrakes.Com Limited is active and that the last return was made up to 15 October 2014. The Companies House printout lists an activity of the company as employing domestic personnel which corresponds to the claimed job of the appellant's ex-wife. At pages 32 to 35 of the appellant's bundle is another printout from Companies House stating the latest annual returns were filed on 11 November 2013. The name of the director on this printout matches the name of the person who signed the letter of 26 October 2015 purporting to confirm the appellant's ex-wife's employment.
14. Given that the appellant adduced documentary evidence indicating that the company was operating at the relevant time and that there appears to be a very good reason why he was unable to obtain corroborating bank statements from his wife, I find that the First-tier Tribunal's rationale for finding that little weight should be given to the appellant's wife's P60 and payslips, notwithstanding that they appear genuine and are internally consistent, does not withstand scrutiny. This is a material error of law such that the decision will need to be remade.
15. In remaking the decision I note that the only issue to be resolved is whether the appellant's ex wife was working at the time of the divorce. The appellant has submitted a substantial body of evidence to demonstrate his wife was working, as set out above in paragraph 5. This includes his wife's P60 and wage slips from a company called Racingbrakes.Com Limited, a letter from the company's manager stating the ex wife's tax registration number and confirming her employment, and companies' house documentation to show the company was in existence. There is nothing about any of the documents adduced by the appellant which suggests they are anything other than genuine. The P60 and wage slips are consistent with each other. Taken together, this evidence shows, on the balance of probabilities, that the appellant's wife was employed at the relevant time and thereby exercising Treaty Rights.
16. In reaching this decision I have not given consideration to or placed any reliance on the new evidence the appellant sought to have admitted. Had I found it necessary to consider or take into account this new evidence when remaking the decision, I would have adjourned the hearing in order to give the respondent time to consider it.

Notice of Decision

- A. The decision of the First-tier Tribunal contains a material error of law and is set aside.
- B. I remake the decision by allowing the appellant's appeal under the Immigration (European Economic Area) Regulations 2006.
- C. No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 November 2017