



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

Appeal Number: IA/32197/2015

THE IMMIGRATION ACTS

**Heard at Stoke
On 2 November 2017**

**Decision & Reasons Promulgated
On 6 November 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

BABATUNDE OGUNLADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Ogundero, Chris Alexander Solicitors

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. He applied for a residence card as confirmation of his right to reside in the United Kingdom as the former spouse of an EEA citizen. The couple divorced on 4 June 2014. This application was refused by the SSHD in a decision dated 23 September 2015.
2. In a decision dated 13 July 2016 I allowed the appellant's appeal against a decision of the First-tier Tribunal dated 29 November 2016 dismissing his appeal. I gave directions that the appeal would be

remade by me at an adjourned hearing to enable the appellant to submit, and the respondent to address updated evidence.

Hearing

3. At the hearing before me both representatives agreed that the sole issue in dispute was whether the appellant's ex-wife was exercising Treaty rights on the date of the divorce. The appellant relied upon documentary evidence from his ex-wife's accountants and the HMRC to support his evidence that she was working as a mobile hairdresser at the material time. The respondent outlined some brief concerns regarding the documentary evidence in a position statement dated 31 August 2017.
4. I heard evidence from the appellant, who was cross-examined by Mr McVeety, before hearing brief submissions from both representatives. Mr McVeety invited me to determine the appeal on the basis of the evidence available. Mr Ogundero submitted that the appellant provided credible evidence supported by documentary evidence, and the appeal should be allowed.
5. I reserved my decision, which I now provide with reasons.

Findings

6. Having heard from the appellant, I accept that he has provided truthful and credible evidence. He answered the questions asked of him carefully and directly. He was candid in explaining that the divorce proceedings were not amicable and he had lost touch with his ex-wife, such that the evidence available as to her self-employment is limited. In particular, I accept the evidence set out below.
 - (i) I accept that the appellant is a self-employed barber. He provided credible evidence that he moved out of his Parkdale road address to Lamcote road when he was in dispute with his landlord and this explains the different addresses in the HMRC evidence relevant to him.
 - (ii) I accept the appellant's own evidence that his ex-wife was working as a self-employed 'mobile' hairdresser from the time they got married in 2009 to the date of divorce, and this continued after the divorce.
 - (iii) I accept that the appellant has provided cogent documentary evidence in support of his own evidence. He has credibly explained how he was able to obtain this evidence with the assistance of a mutual friend. The documentary evidence includes:

- a. accounts prepared for the appellant's ex-wife trading as "Unique Hairdressers" for the years ending April 2014 and April 2015. I accept the appellant's explanation that the addresses provided by the accountants refers to correspondence addresses, as she was moving around at the time.
 - b. HMRC self-employed tax calculations for the tax years 2012 to 2015. I am satisfied that these documents are reliable even though some include typos (eg. Barkdale road address instead of Parkdale road). I note the submission that Nottingham addresses have been provided when the appellant claims that his ex-wife moved to London, but accept his oral evidence that these were used as correspondence addresses by his ex-wife. The HMRC evidence is consistent with the accountants' evidence.
7. When all the evidence is considered together, I am satisfied that the appellant's EEA former spouse was exercising free movement rights as a self-employed hairdresser at the time of their divorce and the appellant is currently in self-employment as a barber.
8. It follows that as the only issue in dispute has been resolved in the appellant's favour, his appeal is allowed under regulation 10 of the Immigration (EEA) Regulations 2006.

Decision

9. I remake the decision by allowing the appeal.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

2 November 2017