



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

Appeal Number: EA/06061/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 October 2018**

**Decision & Reasons Promulgated  
On 25 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**WASEEM AHMED**

(anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Bazini, counsel instructed by E2W Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

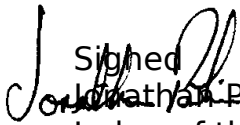
**DECISION AND REASONS**

1. I see no need for and do not make any order restricting the publication of details of this case.
2. This is an appeal against a decision of the First-tier Tribunal on 12 March 2018 dismissing the appellant's appeal against the decision of the Secretary of State refusing him a residence card on the basis of his retaining rights of residence as the former husband of an EEA national exercising treaty rights in the United Kingdom.
3. In order for him to succeed in his appeal it was necessary for him to establish two things. He had to establish that his former wife had continued to exercise treaty rights and he had to establish that he was continuing to work and had worked for a period of at least five years.

4. I am satisfied that the First-tier Tribunal erred in two respects. The First-tier Tribunal appears not to have considered some evidence clearly in the bundle which was highly pertinent. Clearly it was an error of law not to consider evidence which, if considered to be reliable, supported the appellant's case on a point of controversy.
5. Secondly the First-tier Tribunal refused to admit evidence produced at the last minute which related to the recent employment or economic activity on the part of the appellant. The judge was understandably displeased at the late production although it is right to note that the documents were dealing with very recent events. Significantly there was no objection from the respondent about the documents being produced late, nor about them being admitted as evidence nor did the respondent request for an adjournment.
6. In those circumstances it is hard to see why the judge thought it was right to exclude the evidence. It was not right, and I find that by reason of these two errors the First-tier Tribunal materially erred in law and I set aside its decision.
7. I have had the benefit of a full bundle today. Mr Bazini took me through the bundle with care and Ms Everett for the Secretary of State was given every opportunity to consider the evidence that was there. In the circumstances Ms Everett indicated she did not wish the witness to be called.
8. The documents clearly show a sustained pattern of the appellant working as a taxi driver for a period of at least five years and clearly show his former wife earning money for the requisite time. Given the realistic and helpful attitude Ms Everett has taken I do not find it necessary or helpful to set out in more detail the reasons behind my findings and I note Ms Everett expressly agrees with this approach.

#### Decision

9. In the circumstances I find the First-tier Tribunal erred in law. I set aside this decision and I substitute a decision allowing the appellant's appeal.

  
Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 22 October 2018