



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01306/2018

THE IMMIGRATION ACTS

Heard at Field House
On 14 March 2019

Decision & Reasons Promulgated
On 19 March 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

KORLEX BOATENG MENSAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appeared in person, not legally represented
For the Respondents: Ms A. Everett, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Kenya. He entered the United Kingdom in March 1998 and on 19 September 2010 he married a Dutch national. He was granted a residence card as her spouse, which was valid from 18 September 2012 to 18 September 2017.
2. A petition for divorce was filed in May 2017 and a decree absolute was granted by the Family Court on 13 October 2017

3. On 19 December 2017 the Appellant applied for a residence card on the basis that he had a retained right of residence but his application was refused on 23 January 2018. The sole ground of refusal was that the Appellant's application had not been accompanied by a copy of his ex-wife's passport or identity document. The Appellant appealed against this decision but in a decision, promulgated on 21 September 2018, First-tier Tribunal Judge Kainth dismissed his appeal. The Appellant appealed against this decision and First-tier Tribunal Judge Lever granted him leave to appeal on 18 October 2018.
4. On 2 January 2019 I found that First-tier Tribunal Judge Kainth had made an error of law for the reasons given in my decision of that date and reserved the re-hearing to myself.

THE RE-HEARING

5. I also made a number of directions at the error of law hearing on 2 January 2019. The Appellant complied with these directions and on 14 January 2019 his solicitors filed and served a copy of the divorce petition he filed at the Family Court in Bury St. Edmunds on 1 June 2017.
6. The Respondent did not comply with the directions addressed to him and, on 7 March 2019, I sent further directions, repeating the ones made previously. The Respondent has not provided any HMRC records but in an email, dated 13 March 2019, the Home Office Presenting Officer stated that she was satisfied that the Appellant's ex-wife was exercising her Treaty rights at the salient times.
7. She went on to state that this in effect removed the only impediment to the appeal being allowed in the Appellant's favour. This is correct.
8. Regulation 10 of the Immigration (European Economic Area) Regulations 2006 states that:
 - (5) A person satisfies the conditions in this paragraph if-
 - (a) he ceased to be a family member of a qualified person...on the termination of the marriage...of that person;

- (b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
- (c) he satisfies the condition in paragraph (6); and
- (d) either-
 - (i) prior to the initiation of the proceedings for the termination of the marriage...the marriage...had lasted for at least three years and the parties to the marriage...had resided in the United Kingdom for at least one year during its duration;
- (6) The condition in this paragraph is that the person –
 - (a) is not an EEA national but would, if he were an EEA national, be a worker...”

9. There is no additional requirement that the passport or identity card of the EEA national to whom the Applicant was previously married should accompany the application.

10. Regulation 21(5) of the Immigration (European Economic Area) Regulations 2016 does state that:

“where an application for documentation under his part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national... the application must be accompanied or joined by a valid national identity card or passport in the name of that EEA national”.

11. However, Regulation 21(5) does not apply to applications for documentation made under Part 1 of the Regulations and the Appellant’s application was made under Part 1. .

12. The sole basis upon which the Appellant’s application was refused was that he had not provided his ex-wife’s identity document and for the reasons given above the Respondent was wrong in law to assert that he had to provide such a document.

13. In the refusal letter, the Respondent did go on to state that the Appellant’s application had not received any further consideration and this was why I made directions for the Respondent to produce the Appellant’s ex-wife’s HMRC records. However, the Respondent now accepts that the Appellant’s ex-wife was exercising a Treaty right at the relevant times and he does not

assert that the Appellant did not meet any of the other requirements for being granted a residence card as someone who retained a right of residence on divorce.

14. As a consequence, the Appellant meets the necessary requirements for being granted such a residence card.

Decision

- (1) The appeal is allowed.

Nadine Finch

Signed

Date 14 March 2019

Upper Tribunal Judge Finch