



The Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: IA/01260/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On November 21, 2014

Determination Promulgated  
On November 24, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR GHULAM ABBAS  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood (Legal Representative)

For the Respondent: Mrs Pettersen (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant, (born July 24, 1964 is a citizen of Pakistan. The appellant entered the United Kingdom on April 6, 2008 with entry clearance as a student valid until August 3, 2008. On July 29, 2008 he applied for further leave to remain as a student and this was granted until August 31, 2009. He met his EEA national ex-wife, Ms Andras, and he applied for permission to marry her on May 15, 2009. The parties married on July 20, 2009 and on August 25, 2009 he applied for a residence card

which was issued and was valid until September 8, 2014. They divorced on March 11, 2013 and on July 24, 2013 he applied for retention of rights under Regulation 10 of the Immigration (European Economic Area) Regulations 2006 as a family member. The respondent refused his application on December 13, 2013.

2. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the 2006 Regulations on December 28, 2013. On May 1, 2014 Judge of the First Tier Tribunal Herwald (hereinafter referred to as the "FtTJ") heard his appeal. He refused his appeal under the EEA Regulations in a determination promulgated on May 13, 2014.
3. The appellant lodged grounds of appeal on May 21, 2014 and on June 3, 2014 Judge of the First-tier Tribunal Page refused permission to appeal. The grounds were renewed to the Upper Tribunal and on August 21, 2014 Upper Tribunal Judge O'Connor found it arguable the FtTJ had erred by failing to have regard to the appellant's written evidence or by failing to give adequate reasons. He also found it was further arguable that the FtTJ's reasoning in paragraph [13(i)] was irrational.
4. The respondent filed a Rule 24 response dated September 3, 2014 in which she stated there was no error in law and the FtTJ was entitled to find the evidence did not demonstrate his ex-wife was a qualified person for the requisite period.
5. The appellant attended the hearing before me and was represented by Mr Wood.

### **SUBMISSIONS**

6. Mr Wood adopted his grounds of appeal and submitted:
  - a. There was ample evidence before the FtTJ to demonstrate the appellant's ex-wife was working and exercising treaty rights as at the date of their divorce. Page 23 of the original bundle contained a copy of the appellant's ex-wife's online HMRC Tax submission for 2012/2013 and page 25 contained the income and expenditure form that confirmed her self-employed income. The figure of £2,993 could be seen on the tax return as "profit from self-employment". This was adequate evidence that the appellant's ex-wife was working at the relevant time.
  - b. The FtTJ should have given more weight to the appellant's claim that his ex-wife was working at the relevant date despite there being no actual documents to prove this. The FtTJ should have had

had regard to the fact the appellant was now divorced from his wife and obtaining documents is not that easy.

- c. His finding that the appellant's wife was a drug addict was irrational as the appellant had merely said the marriage had broken down partly because she began to take drugs. This did not mean she was a drug addict.
7. Mrs Pettersen responded to the appellant's grounds of appeal and submitted there was no error in law. She submitted:
    - a. The FtTJ's decision was neither perverse nor irrational. The FtTJ took into account the appellant's own evidence about his ex-wife's own drug use and concluded that without documents the evidence was not reliable and therefore anything the appellant claimed to have been told was also unreliable. The FtTJ was entitled to be cautious.
    - b. The FtTJ was conscious of the problems divorcees sometimes face but in this appeal the appellant and his legal advisors had an authority to obtain evidence about her employment and had failed to submit the relevant documents either with the application or to the First-tier Tribunal. The FtTJ was entitled to make the finding he did and reject the appellant's explanation.
    - c. The evidence at pages 23 and 25 did not prove the appellant was working at the date in question. It merely showed that during the financial year 2012/2013 she claimed to have earned £8,156. This did not prove she was working as at the date of their divorce.
  8. In response to Mrs Pettersen's submissions and questions posed by me, Mr Wood further submitted:
    - a. If the FtTJ was entitled to place weight on the appellant's evidence that she had a drug habit then why could he not place similar weight on her claim to be working?
    - b. The FtTJ suggested that the solicitors has deliberately omitted evidence and this was without any evidence to back this claim up.
    - c. The document at page 48 of the supplemental bundle confirmed the appellant was working.
  9. I reserved my decision on all issues.

**MY FINDINGS ON ERROR IN LAW**

10. The appellant applied for a retained right of residence under the 2006 Regulations. The appellant must demonstrate on the balance of probabilities that he met the requirements of Regulation 10 of the 2006 Regulations. In particular, he has to show that they were married for three years prior to the initiation of the divorce proceedings and that his ex-wife was a qualified person at the date of termination of the marriage.
11. The FtTJ heard oral evidence from the appellant and he also had before him three bundles of evidence.
12. The issue that led to the dismissal of his appeal was the FtTJ was not satisfied the appellant's ex-wife was working at the date of termination of the marriage.
13. The grounds of appeal challenged that finding arguing that firstly there was the appellant's own evidence before the FtTJ and secondly the FtTJ had no basis to make a finding the appellant's ex-wife was a drug addict and was therefore unreliable.
14. I have considered the submissions today and reviewed the evidence that was available to the FtTJ. In considering whether there was an error in law I have not had regard to evidence that has very recently been submitted, as it was not available to the FtTJ.
15. In paragraph [9] of the appellant's witness statement dated February 11, 2014 the appellant described why his marriage broke down. He stated "However, our relationship began to deteriorate when Imola began taking drugs... It was when she began taking drugs that I could not tolerate it." At paragraph [10] he continued, "Imola started smoking marijuana. I would tell her this should not be doing this but she would get angry and annoyed with me. She said it helped her relax. Later however she started taking heroine and cocaine ." At paragraph [11] he stated, "Very soon after starting to take drugs Imola would be constantly short of money. She would demand money from me. When I refused to give her money she would verbally fight with me and smash things up at home. Our once lovely home became a pigsty. It smelled of alcohol, cigarettes and drugs." At paragraph [12] he stated, "In a desperate attempt to save our marriage I would give in to Imola's every demand. Imola even used my credit cards and left me with debts of £11,000 and used all our savings on drugs. She would also take money from me"
16. The FtTJ concluded in paragraph [13(j)] the appellant's ex-wife was a drug addict. I am satisfied the appellant's evidence supported this conclusion. In his own words she stole from him, used all her own

money, their savings and incurred £11,000 debts because of her drug use. That behaviour supports the FtTJ's finding that she was a drug addict and he was entitled to make a finding about her as he did.

17. The real issue in this appeal is whether there was adequate evidence before the FtTJ of the appellant's ex-wife work. Through the appellant's own evidence it can be ascertained that they effectively separated on August 5, 2012 when his ex-wife went back to Romania and Hungary to visit family. She returned to the United Kingdom on September 20, 2012 and according to the appellant's statement she left the marital home in October 2012. They remained in contact by phone it appears but there has been no direct contact since she left in October 2012.
18. The FtTJ had evidence of her tax return but he did not find this proved she was working at the date they divorced which is what he had to show. A tax return merely shows an income for a twelve-month and is not evidence of when that income was earned. The FtTJ had the evidence from the appellant but this is based only on what he may have been told and was not based on any personal knowledge because he did not know where she was living in London.
19. The FtTJ was aware that she had a drug problem and also had gone to Hungary and Romania and was leading a very unsettled lifestyle.
20. There was little evidence in the bundles that demonstrated she was working in any capacity as at the date of their divorce. The invoices at pages 61 and 62 did not prove she was cleaning at that date.
21. If the appellant had produced evidence of her employment or details of her working as at March 11, 2013 then the FtTJ could have made a different finding to that he made in his determination.
22. Accordingly, I am satisfied that the findings made were open to him. There is no material error of law as submitted. I dismiss the appeal.
23. The appellant's solicitors have submitted an additional bundle of evidence dated November 18, 2014. This bundle was not submitted in accordance with the Upper Tribunal Judge's directions. This bundle had no relevance to the error of law hearing, as I am only concerned with evidence that was before the FtTJ.
24. There are documents in this bundle, which if accepted by the respondent, would tend to show the appellant's ex-wife was employed at March 11, 2013. That would be a matter for the respondent if a subsequent application was made and this comment is merely an observation.

**DECISION**

25. There was no material error of law and the original decision shall stand.
26. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **November 24, 2014**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

I do not alter the fee award decision.

Signed:

Dated: **November 24, 2014**

Deputy Upper Tribunal Judge Alis