



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/18693/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18<sup>th</sup> March 2015

Decision & Reasons Promulgated  
On 10<sup>th</sup> April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAKEEL AHMED  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Miss Vidyadharan, Home Office Presenting Officer  
For the Respondent: Mr Saini, Counsel for MTG Solicitors, Middlesex

**DECISION AND REASONS**

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Pakistan born on 10<sup>th</sup> March 1981. He appealed against the decision of the Respondent dated 3<sup>rd</sup> April 2014 refusing to grant him an EEA

residence card as confirmation of his retained right of residence following his divorce from his EEA national spouse. His appeal was heard by Judge of the First-tier Tribunal Napthine on 25<sup>th</sup> November 2014. The appeal was allowed under the Immigration (EEA) Regulations 2006 in a determination promulgated on 10<sup>th</sup> December 2014.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Fisher on 2<sup>nd</sup> February 2015. The grounds assert that the judge erred in law by finding that the Appellant could meet the requirements of Regulation 10 of the Immigration (European Economic Area) Regulations 2006. His divorce was made absolute on 19<sup>th</sup> June 2014 and his employment did not commence until 6<sup>th</sup> October 2014, over three months later. The grounds state that on this basis the judge erred when he found that the Appellant could meet the requirements of Regulation 10(6).

### **The Hearing**

4. The Presenting Officer submitted that the matter in dispute is a narrow one. The Appellant failed to show that he came under the category of employed, self-employed or self-sufficient when he was divorced. The Appellant's claim before the judge was that when he was divorced he was self-sufficient but the judge rejected this. I was referred to paragraph 19 of the determination:

"I do not accept that he was ever self-sufficient. To be reliant upon another, even if he is one's brother, is not to be self-sufficient. One is only self-sufficient if one has resources of one's own which can be relied upon without the favour of others. What would be the position if his brother fell out with him, or his brother took on his own family responsibilities, or fell upon hard times?"

5. The Presenting Officer submitted that because the Appellant was not self-sufficient he cannot meet the required criteria to satisfy the EEA Regulations.
6. The Presenting Officer submitted that at paragraph 24 of the determination the judge states that the Appellant produced evidence that he was employed by a company from 6<sup>th</sup> October 2014 working 30 hours a week for an annual salary of £10,140 and he produced wage slips confirming his income. The Presenting Officer submitted that he started this job more than three months after the date of his divorce. She submitted therefore, that the Appellant does not fall into any of the required categories and cannot meet the requirements of the Regulations.
7. Counsel for the Appellant made his submissions submitting that the ultimate issue is materiality and he submitted that the error by the judge is not a material error. He submitted that the Appellant got a job and started working on 6<sup>th</sup> October 2014. He submitted that the chronology has to be looked at. The judge found that the Appellant had been a worker and so the sole issue is the gap between the decree absolute and the commencement of his new employment. I was referred to the Appellant's witness statement at paragraph 7. The Appellant states "I confirm that at the time of the application I had been self-sufficient for several years through the

support of my brother". Counsel submitted that the judge was therefore mistaken when in the determination he states that the Appellant was not self-sufficient. He submitted that this is not a material error.

8. Counsel submitted that the Appellant has sickness insurance and this was accepted by the Respondent. Counsel submitted that what we have to decide is whether the Appellant was self-sufficient for the gap between his decree absolute and the commencement of his new employment.
9. At paragraph 19 the judge states that one is only self-sufficient if one has resources of one's own and I was referred to the case of **AG and others Germany [2007] UKAIT 00075**. At paragraph 59 it is stated "There is no justification for any suggestion that the inclusion in the Citizens' Directive of an initial right of residence for three months represents a radical departure." Counsel submitted that this Appellant had an initial right of residence for three months. This paragraph states that to meet the terms of the Regulations, nationals of Member States must have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence. Counsel submitted that that is the case here. The Appellant gets his resources from another source. Counsel submitted that for the gap period from the date of the decree absolute until the Appellant entered employment he was supported by his brother and he submitted that that is sufficient.
10. Counsel submitted that there is nothing in the Regulations stating that an applicant has to be self-sufficient using his own money. He submitted that this seems to be the personal view of the judge but it is not required in the Regulations. He submitted that there is nothing to suggest that the Appellant was ever reliant on benefits and he submitted therefore, that if there is an error of law in the judge's determination relating to this point, which is the only point in issue, it is not a material error. He submitted that the judge was wrong when he found that the Appellant was not self-sufficient during the gap period.
11. Counsel then submitted that there is no requirement for an applicant to be a worker from the day the decree absolute is granted. He submitted that he can be a jobseeker and that is the category the Appellant was in. He submitted that this should have occurred to the judge. I was again referred to the Appellant's statement at paragraph 9 "I have also received a 'certificate of application' on 11<sup>th</sup> September 2014 from the Home Office which I required in order to engage in employment". Counsel submitted that it is crucial for a jobseeker to have this certificate of application and it is clear that the Home Office was aware that the Appellant was seeking work at this time. I was referred to the letter from MTG Solicitors on behalf of the Appellant dated 29<sup>th</sup> January 2014 in which the Appellant's application for a residence card was enclosed. He submitted that the application was made at the beginning of 2014 after the breakdown of the marriage but before the decree absolute. He submitted that in spite of this being dated 29<sup>th</sup> January 2014 the certificate was not sent to the Appellant until September 2014 which is a gap of eight months. He submitted that the Respondent should have considered the application within six months but did not do so. He submitted that because of this the Respondent cannot say that the

Appellant was not a worker as he could not have worked at an earlier date than the one he did, because of the date the certificate was sent to him. He submitted that the Respondent should not criticise the Appellant on this basis as the date when the Appellant was able to start work was due to the Respondent's inaction, as the Appellant could not get a job without the certificate. He submitted that the Appellant was a jobseeker. He submitted that the Appellant made genuine attempts to get a job but was unable to register because he had no certificate, so although he was not a formal jobseeker he was self-sufficient. Counsel submitted that there are three ways in which the judge could have looked at this, the first being that the Appellant was self-sufficient, the second based on the timing of the application and the third that he was a jobseeker.

12. Counsel submitted that the Appellant as a family member of an EEA citizen is entitled to a right of entry to the United Kingdom for three months. He submitted therefore that there is an amnesty in the Appellant's case and for that three month gap period, he did not require to do anything as long as he was not claiming benefits. He submitted that that three months is automatically granted to the Appellant to enable him to get on his feet and he is then entitled to six months as a jobseeker.
13. Counsel asked me to uphold the judge's decision.
14. The Presenting Officer submitted that Rules are Rules and it is clear that Regulation 6 states that a qualified person has to be a jobseeker, a worker, a self-employed person, a self-sufficient person or a student. She submitted that although the Appellant states that he is self-sufficient the refusal letter states on page 2:

"The documents provided to demonstrate your self-sufficiency included bank statements in your name which show regular deposits into your account. However these bank statements were dated from February 2013 to September 2013 which means you have failed to prove your self-sufficiency since being separated from your spouse in 2010."

She submitted that the burden of proof is on the Appellant and what was provided was not sufficient to meet the terms of the Regulations. I was again referred to the case of **AG and others** at paragraph 62. This states that an Appellant must substantiate his claim and she submitted that the Appellant in this case has not done so. If the Appellant is now saying that he is a jobseeker it is up to him to prove this and she submitted that he has not done so. She submitted that at paragraph 62 of **AG and others** it is stated that at the date of the decision the Secretary of State had no evidence that he was either a jobseeker or a worker or any other sub-category of "qualified persons". She submitted that that is the case here and in this case the judge was not entitled to allow the appeal. She submitted that there is a material error of law in the determination.

### **Determination**

15. This Appellant had a residence card in the United Kingdom until 23<sup>rd</sup> May 2017 but this was revoked because he and his wife separated in 2010 and got divorced in June

2014. The decree absolute is dated 19<sup>th</sup> June 2014. The Appellant's argument has been set out clearly by Counsel at this hearing. He states that the Appellant could not apply for a job until he got a certificate of application which he did not receive until 11<sup>th</sup> September 2014. He got a job shortly after that on 6<sup>th</sup> October 2014. The problem is the gap between 19<sup>th</sup> June 2014 and the job start up date of 6<sup>th</sup> October 2014.

16. The evidence before the judge, according to the Appellant, was that he was self-sufficient during that gap period. The judge found that that was not the case.
17. The requirements of Regulation 10(6) are that the Appellant needs to provide evidence that since the date of his divorce he has been a worker, a self-employed person or a self-sufficient person as if he was an EEA national. I find that the judge was right to find that the Appellant was not a self-sufficient person. At the First-tier hearing the Appellant's representative submitted that the Appellant would need to show that he qualified in his own right from the date he became independent. The judge accepts that at no time has he been reliant on state support for accommodation or maintenance. Although being self-sufficient in terms of the Regulations does not specifically state that a person has to be self-sufficient on his own resources, the Regulations make it clear what is required. The judge finds that self-sufficient is to have savings and investments, property and income of one's own on which one can rely. That does not apply to this Appellant. The judge has given adequate reasons for his findings on self-sufficiency.
18. The Appellant's representative now states that the Appellant was a jobseeker. Counsel admitted that he was not formally a jobseeker. This was not raised before the First-tier Tribunal Judge. The burden of proof is on the Appellant. I do not find that he has shown himself to be a jobseeker for the three month period in question. He was not registered as a jobseeker with the relevant employment office.
19. The Appellant was not a worker for that period so during that period he was not a worker, was not self-employed, was not self-sufficient, was not a jobseeker and was not a student.
20. The Appellant did not get his certificate of application until 11<sup>th</sup> September 2014. I accept that this was unfortunate but we still have the gap between the date of the decree absolute on 19<sup>th</sup> June 2014 and the date of commencement of his employment on 6<sup>th</sup> October 2014. Counsel has referred to a three month period of amnesty but in the Appellant's circumstances the period between the divorce and the job is three weeks more than three month, even if I accept this as an argument.
21. The terms of the Regulations are clear. The Appellant does not meet the definition of "qualified person" from 19 June 2014 until 6 October 2014.
22. Because the Appellant's divorce was not made absolute until 19<sup>th</sup> June 2014 and because he did not commence work until 6<sup>th</sup> October 2014 the Appellant can not meet the requirements of Regulation 10(6).

- 23. There is a material error of law in the judge's determination.
- 24. I am setting aside the determination by Judge of the First-tier Tribunal Napthine promulgated on 10<sup>th</sup> December 2014.

**Notice of Decision**

The appeal is dismissed under the Immigration (EEA) Regulations 2006.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Murray

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Murray