



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/23020/2014

THE IMMIGRATION ACTS

Heard at Field House
On 3rd June 2015

Decision and Reasons Promulgated
On 1st July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RIPON MIAH
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Respondent: Mr Bajwa counsel instructed by A J Bajwa solicitors
For the Appellant: Mr Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Adio promulgated on the 12th February 2015 whereby the judge allowed the Respondent's appeal against the decision of the SSHD to refuse the Respondent a residence card under Regulation 10 of the EEA Regulations. Having considered all the circumstances I do not make an anonymity direction.
2. The Respondent applied for a residence card on the basis that he is entitled to a retained right of residence under Regulation 10 of the Immigration (EEA) Regulations 2006 as amended. The relevant provisions of Regulation 10 provide:-

Family member who has a retained right of residence

10 (1) In these regulations, family member who has retained the right of residence means, subject to paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5)....

(5) a person satisfies the condition in this paragraph if

(a) he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of that person;

(b) he was residing in the United Kingdom in accordance with each regulation at the date of 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 or civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership 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, a self-employed person or a self-sufficient person under regulation 6; or

(b) is a family member of a person who falls within paragraph (a).

3. It was accepted that the only issues related to Regulation 10(5) and (6) in that it is asserted by the SSHD in the grounds of appeal that Judge Adio had failed to make a finding as to whether the Respondent was a worker, self employed person or self-sufficient person in accordance with regulation 6 (a) at the time that the Respondent and his EEA spouse divorced.
4. It was accepted by the Respondent's representative that the judge had failed to make a finding on the issue raised. It was accepted that the decision would have to be remade.
5. In remaking the decision the Respondent's representative sought to submit further documents. The documents had been served on the Upper Tribunal and the SSHD on the 27th May 2015. Materials amongst the documents were documents confirming that the appellant was working at the time that he divorced his wife. There were documents from HMRC and other documents confirming the Respondent's employment at the time of the divorce. I gave leave for the documents to be submitted in evidence.
6. It was accepted that if the documents were authenticated by HMRC that the appellant met the requirements of the Regulations. The SSHD's representative requested an opportunity to be able to check the documents with HMRC. I therefore

allowed the SSHD 7 days to check the documents on the understanding that if the documents proved to be genuine I would be able to remake the decision provided I gave the Respondent leave to produce the documents. I note that the SSHD's representative indicated that, as it was the start of the month, the checks should be capable of being done quite quickly.

7. If the documents proved not to be genuine that the SSHD was to ask for the case to be relisted for evidence to be called. It is now the 30th June and no request has been made for the case to be relisted.
8. In the bundle of documents are the following:_
 - a) A letter from an employer stating that the Respondent has been in employment since arriving in the UK.
 - b) Payslips
 - c) P60 for Tax Year to 5th April 2015
 - d) Tax Calculation from HMRC for tax year 2013-2014
 - e) Bank Statements
9. It was accepted that if the documents were genuine and the Respondent had been working at the relevant time then the appellant would be entitled under the Regulations to a residence card on the basis of a retained right of residence under Regulation 10. The Respondent had divorced his wife on the 6th December 2013. The Tax Calculations for 2013-2014 show that the Respondent earned £9550 in the year to 5th April 2014. The letter from the employers confirms the Respondent was working.
10. There has been no further correspondence from the SSHD. On the basis of the evidence lodged I find that the Respondent was working at the time of his separation from his EEA spouse and that he was working at the time of the divorce. I therefore find that the Respondent meets the requirements of the EEA Regulation, specifically Regulation 10 (5) and (6).

Decision

11. There is an error of law in the original determination and I substitute the following decision:- I allow the appeal under the EEA Regulations.

Signed

Date

Deputy Upper Tribunal Judge McClure