



**Upper Tribunal  
Immigration and Asylum Chamber  
EA/03251/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 15 October 2018**

**on:**

**2018**

**Promulgated**

**On 19 October**

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**Bukky Kuburat Hassan  
(anonymity order not made)**

**Appellant**

**and**

**Secretary of State for the  
Home Department**

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant:

Ms A Jones, of Counsel, instructed by Matthew James Solicitors

For the Respondent:

Ms A Fijiwala, Senior Home Office Presenting Officer

**Background**

1. The appellant is a Nigerian national born on 30 June 1976. She seeks a permanent residence card as the former family member of an EEA national under reg. 15(1)(f). The respondent refused her application on the basis that she had failed to establish that her former spouse had been exercising treaty rights at the point of divorce.
2. The appeal came before First-tier Tribunal Judge Blundell at Hatton Cross on 23 April 2018 and was dismissed by way of a determination promulgated on 16 May 2018.
3. The grounds supply the appellant's petition for divorce, which was not previously submitted, and argue that on the basis of that evidence the judge was wrong to have dismissed the appeal. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 15 August 2018.
4. There has been no Rule 24 response from the respondent.

### **The hearing**

5. I heard submissions from both parties at the hearing before me on 15 October 2018.
6. Ms Jones submitted that the only issue before the judge had been whether the appellant's ex-spouse had been exercising treaty rights at the date of the commencement of divorce proceedings. She submitted that there was now evidence available which showed that proceedings had commenced on 14 August 2014 and not in September 2014 as the appellant had claimed in oral evidence. The appellant had therefore shown that she was entitled to retained rights of residence and the judge had been wrong to dismiss the appeal. It would be costly, intimidating and time consuming for the appellant to have to make a fresh application and she had children.
7. In response, Ms Fijiwala submitted that there was no material error. There had been no documentary evidence about the date divorce proceedings had commenced when the judge heard the appeal. The appellant had given evidence that this she had petitioned for divorce in September 2014. The appellant had been represented throughout. There was no good reason for why she could not have obtained this document previously. No rule 15(2)(A) application had been made to admit the fresh evidence. The judge was entitled to rely on the appellant's evidence of the date of September 2014 and to find that the evidence of work went up to 8 August 2014. He gave reasons why he found that the sponsor had not retained worker status after that date. Even if the divorce petition were to be admitted, there was still a period between the end of the sponsor's employment and the serving of the petition. The issue of the

respondent not making enquiries of HMRC was properly dealt with by the judge and had not been pursued.

8. Ms Jones briefly replied. She stated that the case related to EU law and the appellant was entitled to have her rights enforced.
9. That completed submissions. I then reserved my determination which I now give with reasons.

### **Findings and conclusions**

10. I have carefully considered all the evidence before me and the submissions that have been made by both parties.
11. The issue before the First-tier Tribunal was a simple one; had the appellant established that her former husband had been exercising treaty rights when divorce proceedings commenced. The appellant's oral evidence was that this had been in September 2014. Despite being represented and despite her representatives knowing that this would have been a relevant matter, no documentary evidence was adduced in support. The judge was asked to come to his decision on the available evidence and that is what he did. The fact that the appellant now has evidence which provides a different date does not mean that he made any error of law on the material before him and on which he was asked to make his decision.
12. The judge took account of the previous enquiries made by the respondent of HMRC which established that the sponsor had worked until 8 August 2014. Even taking the amended date shown on the divorce petition into account, he still ceased employment before then. The judge carefully considered whether the sponsor could be considered to be a worker after that date. He gave compelling reasons as to why that inference could not be drawn and the grounds do not seek to challenge those findings and conclusions.
13. It follows therefore that no material error of law has been made out. Firstly, the judge did not have the divorce petition before him and properly came to his decision on the evidence he was given. Secondly, the petition does not, in any event, show he erred because even taking that date into account, the evidence does not establish that the former spouse was exercising treaty rights at that time.
14. I accept that the appellant has children, although neither of them is fathered by the EEA sponsor. If she wishes to make an application on that basis, it is open to her to do so.

### **Decision**

15. There are no errors of law in the determination of the First-tier Tribunal Judge. The decision to dismiss the appeal stands.

**Anonymity order**

16. There has been no request for an anonymity order at any stage and I see no reason to make one.

**Signed:**

A handwritten signature in black ink, appearing to read 'R. Kekić' with a small dot at the end.

**Dr R Kekić  
Judge of the Upper Tribunal**

15 October 2018