



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal no: **EA/06235/2017**

THE IMMIGRATION ACTS

At **Field House**
on **31.10.2018**

Decision signed:
31.10.2018
Sent out:
08.11.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Nancy Karen DADZIE

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: Mrs Regina Spio-Aidoo, solicitor, Spio & Co, Ilford

For the respondent: Mr Chris Avery

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Valerie Mays), sitting at Taylor House on 1 June, to dismiss an EEA wife's appeal by a citizen of Ghana, born 1987, against refusal of a residence card on 28 June 2017. There had been previous decisions to the same effect, including one by Judge Linda Veloso on 27 November 2015.

2. Judge Veloso had dismissed the appeal before her on the same, and other grounds; but Judge Mays found in the appellant's favour on all points except for whether she qualified for a retained right of residence on the basis of her status at the relevant time. Permission was given on the basis that, following *Baigazieva* [2018] EWCA Civ 1088, this had been the date of commencement of divorce proceedings between her and her husband; not, as the judge took it, the date of decree absolute.

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*

(2) *persons under 18 are referred to by initials, and must not be further identified.*

3. The relevant provisions are set out in reg. 10 of the [Immigration \(European Economic Area\) Regulations 2016](#):

(1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).

(5) The condition in this paragraph is that the person (“A”)—

- (a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;
- (b) was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
- (c) satisfies the condition in paragraph (6); and
- (d) either—
 - (i) prior to the initiation of the proceedings for the termination of the marriage or the 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 the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6

...

4. There was no issue on (5) (a) or (b): the judge found in the appellant’s favour on (d), so that the only question is whether she was right to find against her on (6) (a). That provision, unlike (5), as interpreted in *Baigazieva*, does not specify a relevant date for satisfying it; but, as I suggested to Mr Avery, it would be strange indeed to have to assess the non-EEA spouse’s status on a different date from the EEA one’s, unless compelled by something in the Regulations.

5. Mr Avery was unable to point to anything to that effect in the Regulations. It is common ground that this appellant still was a worker at the date of the initiation of divorce proceedings, so this appeal must be allowed, though the judge could hardly be blamed for the result, when neither side had referred her to *Baigazieva*.

Appeal allowed



(a judge of the Upper
Tribunal)