



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

Appeal Number: EA/07854/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4th October 2018**

**Decision & Reasons
Promulgated
On 19th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR JIGARKUMAR ARVINDBHAI PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr E Tufan (Home Office Presenting Officer)

For the Respondent: Mr A Swain (Counsel) instructed by Eagles Solicitors

DECISION AND REASONS

1. The Respondent, to whom I shall refer as the Claimant, is a national of India born on 31 July 1987. He appealed to the First-tier Tribunal against the decision of 1 September 2017 refusing his application for a permanent residence card on the basis of a retained right of residence following his marriage to an EEA national which had taken place on 12 April 2012, the divorce decree absolute being dated 25 November 2016.

2. In a decision and reasons promulgated on 5 April 2018 following a hearing on 16 March 2018, the First-tier Tribunal Judge allowed the appeal under the EEA Regulations. Permission to appeal was sought in time by the Secretary of State on 17 April 2018 on the basis that the decision to allow the appeal was inadequately reasoned in light of the fact that the evidence in relation to the Sponsor's exercise of treaty rights at the time of the divorce in 2016 was a P60 for April 2016.
3. Permission to appeal was granted by Judge I D Boyes of the First-tier Tribunal on 28 August 2018, on the basis that the grounds were clearly arguable and permission to appeal was granted. A Rule 24 response was lodged by the Claimant's representatives on 12 September 2018 asserting that there was no error by Judge Robinson, that the P45s and P60s established that the Sponsor had worked in the UK from 2012 until the breakdown of the relationship on 16 March 2016 and that whilst the Claimant had been able to provide a P60 showing that the Sponsor was still working at Sainsbury's in April 2016, as he set out in his witness statement and oral evidence, he thereafter had difficulty obtaining further evidence from the Sponsor due to the breakdown of the marriage and the fact he left the matrimonial home. Reference was also made to the Home Office guidance processes and procedures for EEA documentation applications which makes clear at pages 6 to 7 that if a document or documents were missing all relevant evidence should be considered in the round.
4. At the outset of the hearing I raised with the parties the recent decision by the Court of Appeal in Baigazieva [2018] EWCA Civ 1088. In particular the judgment of Lord Justice Singh where he held:

"It was sufficient to show that a former EEA spouse exercised treaty rights until divorce proceedings commenced."

This was a reflection of the terms of a consent order based on a concession by the Respondent to that effect.

Hearing

5. At the hearing before the Upper Tribunal, Mr Tufan accepted that if it could be shown that the initiation of the divorce was on or around April 2016, then the requirements of the Regulations were satisfied. The Claimant, helpfully through his Counsel Mr Swain, produced a copy of his divorce petition which was dated 13 May 2016 and was lodged on 27 May 2016 in the Bury St Edmunds Divorce Unit. Mr Swain submitted that the final pay slips the Claimant had been able to obtain from his former spouse were dated April 2016. Mr Tufan declined to make any further submissions.

Decision

6. I dismissed the appeal of the Secretary of State with the effect that the decision of First-tier Tribunal Judge Robinson is upheld. I announced my decision at the hearing. I now give my reasons.
7. It is now tolerably clear in light of the recent decision in Baigazieva (op. cit.) that the relevant decision is not the date that the divorce took place, but the date that the divorce proceedings commenced. At [3] of the judgment, Lord Justice Singh held as follows:

“The Secretary of State now accepts that a third country national, in order to retain a right to reside in the UK in reliance on Regulation 10(5), does not need to show that their former EEA spouse exercised treaty rights as a qualified person until the divorce itself. Rather, it is sufficient to show that the former EEA spouse exercised treaty rights until divorce proceedings were commenced.”

8. The Claimant has produced evidence in the form of a P60 that his former wife was exercising treaty rights up and including April 2016. Thereafter, he was unable to obtain further documentation due to the breakdown of the marriage and the fact that he moved out of the matrimonial home. The Claimant commenced divorce proceedings the following month. I find that, whilst there is a very short period of time of less than a month between the last piece of evidence and the commencement of divorce proceedings, that the Judge did not materially err in law in allowing the appeal given that the Claimant was able to evidence that his former wife had worked consistently since 2012 and up to within a month preceding the divorce proceedings.
9. There was no issue on the facts of this particular case in relation to any other of the conditions set out in Regulation 10(5) of the Immigration (EEA) Regulations 2006.
10. I find no error of law in the decision of First-tier Tribunal Judge Robinson with the effect that it is upheld.

Signed Rebecca Chapman

Date 15 October 2018

Deputy Upper Tribunal Judge Chapman