



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/10678/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6 September 2018

Decision and Reasons Promulgated
On 12 September 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MARTIN ASAMOAH
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Siaw of KPP Oplex

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Ghanaian national born on 19 July 1983. He challenges the determination of First-tier Tribunal Judge Mays dismissing his appeal against the respondent's refusal to grant him a permanent residence card on the basis of his former marriage to an EEA national and his retained rights of residence.
2. The application was refused on 15 August 2016 and the appeal was dismissed by way of a determination promulgated on 5 February 2018.
3. Permission to appeal was granted by First-tier Tribunal Judge Davidge on 7 June 2018 on the basis that the judge arguably erred with regard to the five-year period considered. The matter then came before me on 6 September 2018.

The Hearing

4. I heard submissions from the parties with the appellant in attendance. The relevant five year period was identified as having commenced in January 2013. At my request, Mr Siaw prepared a schedule of the evidence to show that the sponsor had been exercising treaty rights up to the date of the divorce on 23 January 2015 and that the appellant had continued to work since then. He pointed to the judge's finding to that effect set out at paragraph 30 of the determination. He submitted that the requirements had been shown to have been met.
5. In response, Mr Whitwell accepted that the judge had misconstrued the five-year period but submitted that it was not a material error as there was no evidence that the appellant had been working between April 2017 and February 2018.
6. Mr Siaw pointed to paragraph 30 and to the judge's finding that the appellant continued to be a worker. He submitted that the decision should be set aside and remade to allow the appeal.
7. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

Discussion and Conclusions

8. I have considered all the evidence before me and have had regard to the submissions made.
9. It is conceded by the respondent that the judge was wrong to have held that for the appellant to qualify for permanent residence his former spouse would have had to have been exercising treaty rights for a five-year period prior to the divorce, thereby excluding the period from January 2015 until the date of the hearing. Indeed, under reg. 15(1)(f)(ii) this period could have been included as the appellant had retained rights of residence. The relevant period identified by the appellant is, therefore, January 2013 until January 2018. For that reason, the judge erred in law and I set aside his decision.
10. To assist me to re-make the decision, I was referred to the documentary evidence which showed that the sponsor had been exercising treaty rights effectively for two of those years until the divorce in January 2015 and to evidence that the appellant had been in employment from then to the end of the tax year 2017. With respect to the last part of the five-year period I was referred to the judge's finding that the appellant continued to be a worker and had shown an electronic payslip to the judge using his phone. The evidence is to be found at J5-J33, K1-K8 of the respondent's bundle and page 27 of the appellant's

bundle (for the sponsor) and pp. 10-25 of the appellant's bundle (for the appellant). The judge's findings are at paragraph 30.

11. The judge was also satisfied that the appellant and sponsor had been living in the UK for at least one year of the duration of the marriage (at 29).
12. Taking all the evidence into account, therefore, and applying that and the judge's findings to the correct five-year period of January 2013 – January 2018, I am satisfied that the appellant has shown that he and his sponsor have been gainfully employed. It follows that the requirements of regs. 10(5) and 15 (1)(f) have been met.

Decision

13. The First-tier Tribunal made errors of law and the decision is set aside on the basis identified above. I remake the decision and allow the appeal under the EEA Regulations.

Anonymity

14. I make no anonymity order.

Signed



Upper Tribunal Judge

Date: 6 September 2018