



Upper Tribunal  
(Immigration and Asylum Chamber)

EA/00195/2020 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated  
On 2 February 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

STANLEY MAMBO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant is a citizen of Cameroon, born on 10 September 1981. His case arises under the Immigration (EEA) Regulations 2016.
2. The SSHD made a decision dated 17 December 2019. This describes itself as the refusal of an “application made on 16 September 2019 for a permanent residence card as a retained right after divorce to confirm that you are the former family member of EEA national Neline Atteh, who was exercising treaty rights in the UK”.

3. (That may not be an accurate description of the application made; but neither party has provided a copy of it.)
4. The SSHD's decision refuses the application on the view that the appellant was married to Neline Atteh from 28 November 2009 until dissolution by a decree absolute on 27 June 2012, a period of 2 years 7 months, which fell short of the 3 years required by the regulations for a retained right of residence after divorce.
5. The SSHD rejected the assertion, raised by implication from some of the documents provided by the appellant, that he remained married to Neline Atteh.
6. The SSHD declined to consider other evidence relating to the appellant and to Neline Atteh (which, presumably, was designed to show that other requirements of the regulations were met) on the view that the duration of the marriage for less than 3 years was decisive.
7. The SSHD advised the appellant that he had a right of appeal, or that he might apply again, if he had further evidence (which, if he does have a case, might have been the more sensible course).
8. The appellant filed an appeal to the FtT, asking for a decision "on the papers". With his grounds he produced a copy of a decision by FtT James in appeal EA/04087/17, promulgated on 5 June 2018. This was an appeal against refusal of a residence card as a former spouse. The FtT found for the appellant on the issue of producing a passport, but dismissed his appeal because he had not produced evidence to show compliance with the regulations.
9. In his appeal to the FtT in this case, the appellant also produced a copy of decision of the Family Court at Luton on 11 March 2016, setting aside his divorce; "evidence of exercising treaty rights for my estranged wife and myself", although without any comprehensible statement of how the evidence served to meet the terms of the regulations; and evidence that he had petitioned for divorce, in ongoing proceedings.
10. FtT Kaler dismissed the appellant's appeal by a decision promulgated on 16 April 2020. The judge considered the case under regulation 10; found at [15] that the order of 11 March 2016 "did not change the position"; at [16], that the evidence was inadequate to show that Neline Atteh exercised treaty rights between 2008 and 2013, her earnings were very low, and her work was "marginal and ancillary" rather than "genuine and effective"; at [17], that he had not shown he had resided with her for at least a year during the course of the marriage; at [18], that he had not shown that she was exercising treaty rights up to 2013 or when the new divorce proceedings were commenced; and at [19] that he was not entitled to a residence card "as the former spouse of an EEA national who was exercising treaty rights" or "as the spouse of an EEA national who is or was exercising treaty rights at the relevant time".

11. The appellant applied for permission to appeal to the UT. His grounds raise two main points:- (i) as he remains married, his case should have been considered under regulation 15 not regulation 10, and (ii) the FtT erred in its findings on Neline Atteh's earnings and exercise of treaty rights.
12. FtT Judge L Murray granted permission on 8 June 2020, on the view that Judge Kaler arguably erred in holding that the Family Court order of 11 March 2016 did not change the position, and by dealing with the case under regulation 10 rather than regulation 15.
13. The grant of permission says nothing about the second issue raised in the grounds.
14. The UT issued directions on 17 September 2020 with a view to deciding without a hearing (a) whether the FtT erred in law and (b) if so, whether its decision should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing.
15. There is no response on file from the SSHD.
16. The appellant on 30 September 2020 filed copies of various materials.
17. Neither party has asked for a hearing.
18. In all the circumstances, the UT may now proceed, in terms of rules 2 and 34, to decide (a) and (b) above without a hearing.
19. The FtT held, rather baldly and without giving any reasons, that the Family Court order of 11 March 2016 did not change the position. The FtT did not have the benefit of reasoned submissions on either side, and nor does the UT; but the order, on its face, plainly did change the position, to the effect that the marriage had not ceased to exist.
20. If the case fell under regulation 15, the appellant had to show that Neline Atteh had "resided in the United Kingdom in accordance with these regulations for a continuous period of five years".
21. The papers filed by the appellant with the UT contain a sheet marked "estranged wife proof of treaty rights 2008 - 2013". This is followed by a tax calculation for the year 2008 - 2009, income £3887.00; tax certificate 2009 - 2010, income £7071.81; a copy of one page of an application for jobseekers' allowance on 12/1/11; notification of pregnancy and maternity leave to be taken from 24/1/11; and payslips for two weeks, to 25/12/11 and to 26/12/12. This appears to be the same evidence as was filed with the FtT.
22. The FtT concluded that the appellant had not shown that Neline Atteh had resided in the United Kingdom in accordance with these regulations for a continuous period of five years. If there had been only minor gaps, the FtT might have made an inference

in the appellant's favour; but the evidence did not come close to covering the full period. Nothing in the appellant's grounds, submissions or evidence shows that the FtT's conclusion involved the making of an error on a point of law.

23. The appellant disagrees with the FtT's conclusion that the earnings of his spouse were very low, and that her work was "marginal and ancillary" rather than "genuine and effective"; but he also does not show that conclusion to be affected by any error on a point of law.
24. On either or both of those issues, the appeal was bound to fail, whether considered under regulation 10 or under regulation 15.
25. I therefore find that any error by the FtT was not such as to require its decision to be set aside. Alternatively, if the decision were to be remade, the appeal would again be dismissed.
26. No anonymity direction has been requested or made.

*Hugh Macleman*

18 January 2021  
UT Judge Macleman

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.