



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/42586/2013

THE IMMIGRATION ACTS

Heard at Field House, London
On 8 October 2014

Determination Promulgated
On 18 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

NIKOLAY PLOTNIKOV

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Slatter instructed by Richmond Chambers LLP

For the Respondent: Mr Shilliday, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Russia, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse to issue him with a permanent residence card under regulation 15 of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations). First-tier Tribunal Judge Denson dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The background to this appeal is that the appellant entered into a civil partnership with a French national on 8 January 2008 and he was issued with a residence card

valid from 13 March 2008 until 13 March 2013. The relationship broke down as a result of domestic violence and the civil partnership was dissolved on 29 July 2013. It is the appellant's case that his former partner has been self-employed in the UK since 2007 and was, in addition, employed between 2007 and 2009. The appellant submitted documents in relation to his former partner's employment and self-employment to the respondent and further documents were submitted to the First-tier Tribunal.

3. The First-tier Tribunal Judge found that the evidence produced did not demonstrate that the appellant's former partner was exercising treaty rights in the UK prior to the dissolution of the civil partnership. The appellant had submitted his former partner's tax returns for the years 2009 until 2014. However the Judge found that the tax returns showed that the appellant's former partner received no income in relation to his self-employment for the period 6 April 2012 to 5 April 2014 and that he was not therefore engaged in any form of self-employment during that period.
4. The grounds of appeal to the Upper Tribunal contend that the Judge misread the tax returns. It was submitted that the appellant's former partner was an artist and musician and that he did not make any income in relation to sales of his artwork and music but that the supplemental pages of the tax return for 2011-12 did in fact show a turnover of £3075 during that year. It is contended that the supplemental pages of the tax returns for 2012-13 showed a turnover of £9761 and for 2013-14 was £7863. It was accepted that the 2011-12 return shows a low turnover. It is contended that Article 49 of the Treaty on the Functioning of the European Union does not require a minimum amount of self-employed earnings in order to establish activity as a self-employed person.
5. At the hearing before me Mr Slatter accepted that the supplemental pages for the 2012-13 and 2013-14 were not before the First-tier Tribunal Judge. He submitted that the appellant had given these to his solicitor in advance of the First-tier Tribunal hearing but did not realise that they were not in the bundle until after the hearing. Despite this I accept that the Judge erred in his reading of the 2012-13 tax return. The Judge quotes from that tax return at paragraph 25 where he said that it asked for '*other UK income not included on supplementary pages*' as nil. In fact this indicates only that there was no other income apart from the self-employed income. The same answer was misinterpreted in the 2013-14 tax return. The supplemental pages in relation to these two years, which I accept were not before the First-tier Tribunal Judge, show that the appellant's former partner did achieve earnings from self-employment during these periods.
6. Mr Slatter submitted that in any event the Judge erred in considering it necessary to demonstrate earnings from self-employment to establish that the appellant's former partner was self-employed. He submitted that there is no authority to support the conclusion that a self-employed person is required to show a profit for each year of his self-employment. Mr Shilliday accepted that Mr Slatter's

submission was right and that the Treaty and Regulations do not require the demonstration of any earnings from self-employed activity. He accepted that there was no evidence of abuse in this case.

7. The First-tier Tribunal Judge said at paragraph 27 of his determination that whilst the appellant's former partner may have completed a tax return as being self-employed *'the fact that he has not been engaged in any form of self-employment that would earn an income does not show that he was exercising treaty rights prior to the termination of his civil partnership with the appellant...'* (my emphasis).
8. I am satisfied that the Judge erred in adding the requirement that there had to be evidence of income from self-employment to demonstrate that the appellant's former partner was exercising Treaty rights by pursuing activity as a self-employed person during the relevant period. The tax returns and correspondence in relation to national insurance contributions do establish that the appellant's former partner was pursuing activity as a self-employed person throughout the relevant period.
9. The Judge therefore erred in his treatment of the evidence before him and in his interpretation of the Treaty and EEA Regulations and I therefore set the decision aside and remake it.
10. The appellant was granted a residence card on the basis of his civil partnership with an EEA national on 13 March 2008 which was valid until 13 March 2013. The civil partnership was dissolved on 29 July 2013.
11. I am satisfied on the basis of the evidence before me that the appellant's former partner was pursuing activity as an employed or self-employed person between 2007 and 2014.
12. The respondent considered this application under regulation 10 and 15 (1) (f) which apply to those with a retained right of residence. However this case falls within regulation 15 (1) (b) which provides as follows;
 15. (1) The following persons shall acquire the right to reside in the United Kingdom permanently –
 - ...
 - (b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
 - ...
13. The appellant has demonstrated that he acquired permanent residence under regulation 15 (1) (b) on 13 March 2013, when his residence card expired, because by then he had been residing in the UK with his former partner for a continuous period of five years.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set it aside and remake it by allowing the appeal.

Signed

Date: 17 November 2014

A Grimes
Deputy Judge of the Upper Tribunal