



IAC-FH-CK-V1

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

Appeal Number: IA/11615/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 September 2015**

**Decision & Reasons Promulgated
On 23 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS ELIZABETH MGBOJIKWE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: Mr S Mwaekwu, Solicitor of Moorehouse Solicitors

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department concerning a refusal to issue a residence card in relation to a claimed right of residence made by the applicant under the Immigration (European Economic Area) Regulations of 2006.
2. Very briefly, the applicant was previously married to a Slovak national and they divorced on 15 March 2013. An application was made for a residence card on 1 May 2013, after the termination of the marriage. The key issue

before the First-tier Tribunal Judge was the extent to which any retained rights of residence vested in the applicant.

3. The matter was heard by First-tier Tribunal Judge Blum and his Decision and Reasons were promulgated on 20 November 2014. The bulk of that determination deals with a consideration of evidence concerning the employment situation of the applicant's former spouse.
4. The judge quite narrowly came to the view that notwithstanding certain matters which he viewed with scepticism, the applicant's former spouse was employed as a worker. Paragraph 18 of the determination concludes that those matters:

“ ... give rise to suspicion on my part as to whether the former spouse really was working, but this is mere suspicion and insufficient to displace the otherwise clear evidence presented by the wage slips and the corresponding deposits in the joint bank account that, at the date of the divorce, the appellant's former spouse was employed as a worker.”
5. It is the Home Secretary's appeal, and it has now been conceded by the applicant's representative (responding to the appeal), that the First-tier Tribunal Judge did not turn his mind to the specific provisions of Regulation 10(6) which concerns the position of the applicant herself and whether she could properly be classified as a worker for these purposes.
6. There was, I am told, some evidence on this matter before the First-tier Tribunal Judge but not to my mind sufficient to be conclusive one way or the other. There was clearly an error of law by the First-tier Tribunal Judge in not dealing expressly with Regulation 10(6), and this is conceded on behalf of the respondent. I have had to consider whether it would be appropriate for the matter to be retained in the Upper Tribunal and the decision remade or for the matter to be remitted to the First-tier Tribunal.
7. In my view (and I think ultimately this view is shared by both representatives), the matter is better dealt with afresh by another First-tier Tribunal Judge who can then have the advantage of considering the totality of the evidence including any additional evidence which the applicant may wish to tender, together with representations on the law, particularly the period during which the applicant must demonstrate that she was a worker whether with retained rights or otherwise.
8. There is a degree of ambiguity as to matters of statutory interpretation and neither representative was prepared to address the legal issue today with the particularity and thoroughness it deserved. Rather than adjourn the matter off to have a resumed hearing in the Upper Tribunal and for it then possibly to be remitted at that stage, it seems to me that the overriding objective is best served by embracing the reality that the decision needs to be made again and for me to make no determination as to either the legal issue raised or the underlying evidential merits of the application as it presently stands.

Notice of Decision

Appeal allowed.

Matter remitted to a First-tier Tribunal Judge, not Judge Blum, for a fresh determination.

No anonymity direction is made.

Signed *Mark Hill*

Date 22 September 2015

Deputy Upper Tribunal Judge Hill QC