



IAC-FH-CK-V1

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

Appeal Number: IA/30177/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**Oral judgment given at hearing  
On 29 October 2015**

**On 13 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MS VERONICA ASAMOAH**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Murphy, Counsel instructed by Clapham Law LLP

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana born on 25 March 1980. She came to the UK and was granted a residence card, valid from 22 February 2012 to 22 February 2017. She was married to a French national on 15 October 2008. They divorced on 20 March 2013.
2. On 1 April 2014 the appellant applied for a permanent residence card on the basis of marriage. In a decision dated 12 June 2014 the respondent refused the application and indeed made a decision to revoke the

appellant's residence card on the basis that she was no longer entitled to a residence card as the spouse of a person exercising Treaty rights.

3. The appellant appealed against that decision and her appeal came before First-tier Tribunal Judge Finch at a hearing on 20 March 2014. Judge Finch dismissed the appeal in terms of the appellant's claim that she was entitled to a retained right of residence.
4. Permission to appeal was sought on the basis that the judge had misunderstood the appellant's representative's position in terms of an adjournment request for enquiries to be made by the respondent into the appellant's former spouse's status as a qualified person at the date of divorce on 20 March 2013. It was necessary for her husband to be either employed (or self-employed in this case) on that date.
5. The appellant's position was that she was unable to establish that fact because of their separation and because she was not able to obtain information from him. The appeal proceeded and Judge Finch dismissed the appeal having taken into account such documentary evidence as was available to be put before her. She concluded that the appellant had not established that her ex-husband was in self-employment on 20 March 2013 and that therefore she was the family member of a person who was exercising Treaty rights at the time of their divorce.
6. Permission to appeal having been granted, there was a 'Rule 24' response from the respondent stating that the "application for permission to appeal" was not opposed although of course by that stage permission to appeal had already been granted. What in fact the respondent was saying was that the appeal to the Upper Tribunal was not opposed.
7. The matter was further clarified before me by Ms Brocklesby-Weller on behalf of the respondent to the effect that it was accepted that the First-tier Judge had erred in law in terms of her misapprehension of the situation as to the adjournment request. It was agreed by both parties before me that the judge's conclusion in terms of whether the appellant's ex-husband was exercising Treaty rights on 20 March 2013 was therefore flawed. The First-tier Judge did not have before her all the necessary information for her to come to that conclusion.
8. It was further agreed between the parties therefore, that the appropriate course of action was for the decision of the First-tier Tribunal to be set aside and for the matter to be remitted to the First-tier Tribunal for a decision to be made in the light of such further information that the respondent may be able to obtain from HMRC in terms of the appellant's ex-husband's employed or self-employed status on the date of divorce.
9. Part of the background to the appeal relates to the decision in *Amos v Secretary of State for the Home Department* [2011] EWCA Civ 552 (on the BAILII website it has a criminal division of the Court of Appeal citation but I think it is correct in the EWCA Civ citation). Anyway, the issue in *Amos*

related to the extent to which the respondent was under a duty to undertake enquiries of a spouse or partner's employment record. In the circumstances of this case it was the matter having been raised by the appellant which is the pertinent issue, and not in terms of any actual duty on the respondent.

10. On the facts of this case however, it is accepted by the respondent that it is a case where enquiries ought to be undertaken by the respondent. Ms Brocklesby-Weller indicated that those enquiries will take place with HMRC but may take some weeks to conclude.
11. In the circumstances, I am satisfied that the First-tier Tribunal did err in law in its conclusions in terms of the appellant's entitlement to a retained right of residence. I set aside the decision of the First-tier Tribunal. Having regard to the practice statement at 7.2 it is appropriate for the matter to be remitted to the First-tier Tribunal for a hearing *de novo* in terms of the issue outstanding to be determined, that is whether the appellant's ex-husband was exercising Treaty rights at the date of divorce.
12. Although not discussed before me, it is to be noted that the refusal letter states that a decision has been taken to revoke the appellant's residence card. There does appear to be such a revocation decision in the respondent's bundle, as well as a separate decision to refuse to grant confirmation of the right to permanent residence. The revocation issue will require consideration at the fresh hearing.
13. I make the following direction in pursuance of my decision, namely that the respondent having agreed to undertake enquiries with HMRC in relation to the employed or self-employed status of the appellant's former spouse, those enquiries must be completed by 1 January 2016. It follows that this appeal must not be listed before that date.

### *Decision*

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo*.

Upper Tribunal Judge Kopieczek

10/11/15