



IAC-FH-AR-V1

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

Appeal Number: IA/41603/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 19 October 2015**

Considered further on papers on  
14 December 2015

**Decision & Reasons Promulgated  
on 17 December 2015**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

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

Appellant

**and**

**MOLNAPA PUNBOON  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**DECISION**

1. In a decision sent to the parties on 2 November 2015 I found the determination of First-tier Tribunal Judge Majid allowing the respondent's (hereafter "the claimant's) appeal to be erroneous in law because it had wrongly treated the oral evidence from the claimant and her husband as an adequate substitute for the independent documentary evidence which the Secretary of State had previously informed the claimant she required in order to be satisfied her ex-husband was exercising Treaty rights at the time of the divorce (28 March 2013). Her claim was that at the date of divorce her ex-husband was self-employed. The claimant's appeal had been brought against a decision of the Secretary of State dated 23 September 2013 refusing to grant her permanent residence.


2. As regards re-making of the decision, I directed in that decision that the claimant be given 21 days in which to produce to the Upper Tribunal further evidence relating to the claimed self-employment of her husband from the point of view of HMRC. I stated that if there was no response I would not convene another hearing but would proceed to re-make it on the basis of the evidence on the file. It is now 14 December and the claimant has not replied to my directions nor has she sent anything to explain why she was unable to produce this evidence in time. Accordingly, I turn to consider the evidence as it stands. As I am now re-making the decision, I can have regard to the documents produced to me at the 19 October hearing by Mr Walker in the form of records from HMRC provided to the Home Office. I must also, of course, have regard to the evidence in the existing file, in particular a number of invoices produced by the claimant at the hearing in advance of the First tier Tribunal seeking to establish that her husband was pursuing self-employment during the relevant period, these being produced in support of the claim made by him in his handwritten statement and in his evidence before the First-tier Tribunal Judge.
3. On the basis of the body of evidence now before me it cannot be said that the claimant has established that up to March 2013 the claimant's husband was self-employed or was otherwise exercising Treaty rights; at most it showed that he had previously been employed for some periods between 2008-2013 but not continuously. Indeed it cannot be established that he has ever been self-employed. In this regard I reiterate points from my earlier decision.
4. First of all the claimant was left in no doubt as to the type of documents that were required for the (ex) husband to be accepted as exercising Treaty rights at the date of divorce. When acknowledging her application the Secretary of State had identified the particular types of documentation required. Secondly, the claimant had no difficulty in producing the correct types of evidence for periods leading up to 2008 and to some extent for the period between 2008 and March 2013. Yet there was nothing relating to the date of divorce. Thirdly, this was not a case where the claimant was unable to obtain the cooperation of the ex-spouse in assisting with evidence in support of her the appeal; indeed, the ex-husband attended and gave evidence. The onus of proof was on the claimant and it had to be discharged by evidence in appropriate form.
5. Further, as a result of an adjournment in December 2014 the Home Office had obtained and has now produced evidence from HMRC which stated that there was no evidence to show any employment or PAYE employment records for the years 2008/2009 to 2013/2014. Since the claimant could only succeed if able to show, by aggregation or otherwise, that her husband had accrued five years during which he was exercising Treaty rights continuously prior to the divorce, this reinforces the reasons for concluding that the appeal by the claimant against refusal of a permanent residence card cannot succeed.

**Notice of Decision**

As was stated in my decision sent on 2 November 2015, the First tier Tribunal judge erred in law and his decision is set aside.

The decision I re-make is to dismiss the claimant's appeal.

No anonymity direction is made.

Signed 

Date 14 December 2015

Dr H H Storey, Judge of the Upper Tribunal