



IAC-FH-AR-V1

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

Appeal Number: IA/47883/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 June 2015**

**Decision & Reasons Promulgated  
On 24 July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**CARLOS ROBERTO STIEGLER**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr P. Duffy, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the respondent, the Secretary of State for the Home Department, against the decision of the First-tier Tribunal before Judge Phull (“the Immigration Judge”) who decided to allow the Appellant's appeal against the refusal of the Secretary of State to grant a residence permit under the EEA Regulations (“the 2006 Regulations”). I will refer to the appellant before this tribunal as “the Secretary of State”) and the respondent as “the Appellant”, his designation before the First-tier Tribunal (“FTT”).

2. The Secretary of State was given permission to appeal to the Upper Tribunal (UT) by Judge of FTT Pooler on 30 March 2015 because Judge Pooler considered there was inadequate evidence that the appellant's wife was a "worker" within regulation 9 of the 2006 Regulations. Furthermore, it was arguable that there was a failure to give reasoned findings as to the dates that the appellant's wife was a worker. That was important because in order to retain treaty rights in the UK and for the appellant's wife to be exercising those rights for the purposes of Regulation 9 of the EEA Regulations that situation had to continue up to the date of the divorce was made absolute.

### **Merits of the appeal**

3. The appellant did not attend the hearing despite notice having been sent out on 2<sup>nd</sup> June to the address held on file and to his solicitors. There was no explanation for that so I proceeded with the appeal. I have been helpfully taken to the Regulations by Mr Duffy who points out that the relevant date for the purposes of determining the finding under Regulation 10 and establishing that the appellant's wife was exercising treaty rights was the date the divorce was made absolute, which he told me was in May 2014.
4. Unfortunately the Immigration Judge in her determination did not deal with that date. She dealt instead when the parties' separated in 2013. Further, it is not clear that there was in fact documentary evidence to support the continued employment of the appellant's wife even at that date, but certainly there is insufficient evidence to support her continued employment as at May 2014. For that reason, if for no other reason, the decision of the First-tier Tribunal contains an error of law.
5. I proceed to consider whether the error is likely to be material to the outcome of the decision. It is considered material to the outcome of the appeal because the judge made a finding (that the Appellant's wife was a worker in the UK for the relevant period) without there being any or any adequate evidence to support that finding. There was therefore no proper basis upon which the Immigration Judge could have concluded that the Secretary of State's decision to refuse a residence permit was in accordance with the EEA Regulations. In those circumstances it seems that the correct course, in the absence of any representations from the appellant, who did not attend the hearing, is to remake the decision of the First-tier Tribunal.

### **Notice of Decision**

The appeal by the Secretary of State is allowed. The UT finds a material error of law in the decision of the FTT and substitutes its decision as follows:

The decision of this Tribunal is to dismiss the appeal against the decision of the Secretary of State to refuse to issue a residence card under the EEA Regulations.

The decision of the Secretary of State stands.

No anonymity direction was made by the FTT.

Signed

Date 22<sup>nd</sup> July 2015

Deputy Upper Tribunal Judge Hanbury