



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/05733/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 5th May 2016

**Decision & Reasons
Promulgated
On 20th May 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**MR NGUESSAN BEN ISMAEL NGATTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Simo
For the Respondent: Mr Diwnycz

DECISION AND REASONS

Introduction

1. This is the Appellant's appeal to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Robson hereinafter "the judge") to dismiss his appeal against the Respondent's decision of 29th January 2015 refusing to grant him a permanent residence card as confirmation of a right to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (as amended).
2. After a hearing which took place before me on 3rd February 2016 I set aside the decision of the judge. The precise reasons for my doing so are

contained in a determination which was signed on 12th February 2016 and communicated to the parties on 18th February 2016. Essentially, and in summary, I set the decision aside because I thought the judge had materially erred in wrongly thinking that certain documentary evidence offered to him and which was said to evidence the self-employment of the Appellant's former wife had consisted of entirely blank copy receipts whereas, in fact, although the entries were very faint they were not blank. That error had caused the judge to wrongly think there was some element of malpractice on the part of the Appellant when he had subsequently presented more legible copies.

The Background

3. The Appellant is a national of the Ivory Coast and was born on 20 December 1981. He was previously married to one Sinon Barbara Toure and that marriage took place on 25th October 2008. It is not a matter of dispute that Ms Toure is an EEA national and that she came to the UK in March of 2008 exercising treaty rights. The marriage, though, has now ended. There was some previous dispute as to the date of the divorce but it is now accepted that the two became divorced on 19th December 2011.
4. The Appellant had applied for an EEA residence card in July of 2009 on the basis of his marriage and such was issued to him on 22nd October 2009. It is not clear, and has not been clarified by the evidence before me, whether the Appellant had entered the UK prior to his obtaining his initial residence card and, if so, when, how and on what basis. Be that as it may, on 21st October 2014, and despite his now being divorced from Ms Toure, the Appellant applied for a permanent residence card under the 2006 Regulations referred to above, relying upon preserved rights and the content of Regulations 10 and 15. However, the Respondent refused the application on 5th February 2015, because she was not satisfied that the Appellant's spouse had been a "qualified person" on the date of the termination of the marriage and was not satisfied that the Appellant had resided in the UK in accordance with the 2006 Regulations for a continuous period of five years. The Appellant appealed against that decision and, as noted, his appeal to the First-tier Tribunal was unsuccessful but that decision has now been set aside. My having done that at an earlier hearing, an attempt was made to go on to remake the decision at the same hearing but because of difficulties with interpretation that proved not to be possible. Accordingly, there was a separate hearing of 5th May 2016 concerned with remaking. It is worth noting that, in this context, neither party had asked the Upper Tribunal to simply remit to the First-tier Tribunal. The hearing before the Upper Tribunal, concerned with remaking, was a complete rehearing.

The Law

5. All parties are agreed that the relevant legal provisions with respect to remaking are Regulation 10(5) and Regulation 15(1) of the 2006 Regulations.

6. It is for the Appellant to show that the above requirements are satisfied. He must do so to a balance of probabilities.

The Documentary Evidence before the Upper Tribunal

7. I had, before me, at the hearing of 5th May 2016, the various documents which had been before the First-tier Tribunal. I was also supplied with some further documentation. Mr Simo provided an additional bundle which included a witness statement of 29th April 2016, some copy P60 and wage slip documentation relating to the Appellant's former spouse and some information concerning a company called Argentum Facile Ltd. Mr Diwnycz provided me with three witness statements all made by one John Richards, an officer of Her Majesty's Revenue and Customs and which concerned records held regarding the employment of the Appellant and his former wife and records relating to an organisation called HM & Sons Salvage Trading Ltd.
8. I have carefully considered all of the documentation before me for the purposes of the remaking of this decision.

The Hearing of 5th May 2016

9. Representation was as stated above. I heard oral evidence from the Appellant. There were no additional witnesses. He gave his evidence with the assistance of a French speaking interpreter whom he appeared to understand throughout the course of the proceedings. He adopted his witness statement of 29th April 2016. In cross-examination, he was asked about some receipts which were said to constitute evidence of his former wife's past self-employment. He said that the signature on the receipts was that of a director of HM & Sons Salvage Trading Ltd and not the signature of his former wife. He did not know why his former wife's signature did not appear. He had been given the receipts because he had asked a former director of the company, a Mr Mboungang, for some evidence and he had been able to trace Mr Mboungang through his community contacts. Mr Mboungang had also provided him with some letters confirming the previous engagement by that company of his wife on a self-employed basis. In re-examination the Appellant explained that he had met Mr Mboungang for the first time in 2014 having been able to contact him through community links.
10. I then heard submissions from each representative. In summary, Mr Diwnycz contended that there was simply no persuasive evidence to the effect that the Appellant's former spouse had been a "qualified person" as at the date of the termination of the marriage. Therefore, the Appellant could not meet the requirements contained within Regulation 10 of the 2006 Regulations and his appeal must fail. Mr Simo, submitted, in effect, that there was much in the way of documentary evidence regarding the Appellant's former wife's past employment and self-employment. He submitted that the Appellant had been a credible witness and that I should be satisfied, to a balance of probabilities, that all of the relevant

requirements contained within Regulations 10 and 15 had been met. In particular, I should be satisfied that the former wife was a qualified person as at the date of the termination of the marriage.

My Remaking of the Decision

11. I have borne in mind all of the documentation, the oral evidence I have heard and the oral submissions which have been made to me. Much of the evidence and submissions was concerned with the question of whether or not the Appellant had successfully demonstrated that his wife was a qualified person at the time of the termination of the marriage. It was accepted that if the Appellant could not show that his appeal would fail.
12. I accept that there is certainly some documentation before me which would tend to suggest that the Appellant's former wife has worked in the UK at certain points in the past. Mr Diwnycz, in fact, does not dispute that. Further, a witness statement of John Richards does demonstrate that she was working for Argentum Facile Ltd during the 2009/2010 tax year and the 2010/2011 tax year. Of course, the latter tax year ended on 5th April 2011. Since the marriage was terminated on 19th December 2011 what is said in that witness statement does not directly assist with the question of whether Ms Toure was a qualified person as at 19th December 2011 but I do bear in mind it does indicate something of a past work record.
13. In fact, the only documentary evidence the Appellant has relied on in demonstrating that Ms Toure was a qualified person at the time of the termination of the marriage comprises the receipts referred to above and the letters written by Mr Mboungang referred to above. The receipts cover a period from late 2010 through to March 2012 and do, therefore, span the period of the termination of the marriage. They purport to show that HM & Sons Salvage Ltd made regular payments to Ms Toure during this period, those payments being described in the receipts as "salary". The receipts indicate that the money was received by Ms Toure and her name appears on each of them after the words "received by". There is, underneath those words and her name, on each receipt, a signature. However, the oral evidence is to the effect that that signature is not Ms Toure's but is Mr Mboungang's.
14. Clearly, in looking at what is written on the receipts, they are designed to indicate that monies have been paid to Ms Toure and received by her. Accordingly, therefore, one would expect Ms Toure's signature to be on the receipts as an acknowledgement by her that she has received the amount of money indicated. Those receipts simply do not make sense if they are not signed by her but are signed by someone else. In these circumstances I do not consider them to be of any value in demonstrating that payments were made on a self-employed basis or indeed on any basis, by HM & Sons Salvage Ltd to Ms Toure during the relevant period. I can readily accept that if that company was genuinely making payments on a self-employed basis to Ms Toure it would want to keep records of

those payments but I do not see that such records would be in the form of receipts which it would have been appropriate for the payee to have signed.

15. There are then the letters written by Mr Mboungang. These letters are brief and rather uninformative. It does seem to me, however, that there may have been potential value, from the Appellant's perspective, in Mr Mboungang attending the hearing before me and giving oral evidence about the basis upon which the company of which he had been a director provided work to Ms Toure if, indeed, it did. However, in oral evidence, the Appellant said that he had not thought about calling him to give evidence. I do not believe him. The Appellant has had competent legal representation throughout these proceedings. I feel sure that he and his representatives would have appreciated the potential value of his oral evidence and I certainly think it would have occurred to the Appellant to bring him as a witness. I conclude, therefore, and against that background, that when he told me he had not thought about calling him he was not telling me the truth. That is relevant to the Appellant's general credibility and, hence, directly relevant to the question of whether the claimed evidence of self-employment which he says he obtained from Mr Mboungang was obtained in the way claimed and is reliable. Further, the fact I have not been given a proper explanation as to why he did not attend as a witness undermines what is claimed in the letters and lessens the weight I can attach to them.
16. There is, I accept, some evidence to the effect that HM & Sons Salvage Trading Ltd has existed as a company. Indeed, the statement of John Richards demonstrates that a PAYE employer record exists for that company covering the period from 19th July 2011 to 10th December 2012. That does not, though, of course, mean that that company did actually use the services of Ms Toure on a self-employed basis as claimed.
17. Putting all of the above together I reach a clear conclusion that the Appellant has failed to show that Ms Toure was in any form of employment or self-employment as at the date of the termination of the marriage. This means he has failed to show that she was, at that time, a qualified person within the meaning of the 2006 Regulations. It has not been submitted to me that there is any basis upon which the Appellant's appeal could succeed if he were not able to show she was a qualified person at the material time. In remaking this decision, therefore, I find that the Appellant has failed to show that that requirement is met and that, in consequence, his appeal must fail.

Notice of Decision

The decision of the First-tier Tribunal has already been set aside. In remaking the decision I dismiss the Appellant's appeal.

Anonymity

No anonymity direction is made.

Signed

Date: 19 May 2016

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed

Date: 19 May 2016

Upper Tribunal Judge Hemingway