



IAC-FH-NL-V1

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

Appeal Number: IA/49758/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**NAJEEM ROTIMI BOROKINNI-ADEOSUN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, Counsel instructed by Rodman Pearce Solicitors Ltd

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought in respect of First-tier Tribunal Judge Kelly promulgated on 21 August 2015. It concerns a claim brought by the appellant, born in August 1970 and a citizen of Nigeria. The claim is in respect of a permanent residence card under Regulation 15 of the Immigration (European Economic Area) Regulations of 2006.
2. In a very careful decision the judge goes through the Reasons for Refusal Letter, they being that the appellant had not provided sufficient evidence

to show that he met all the requirements of Regulation 10(5). At the hearing, and this is perhaps with hindsight regrettable, there was no attendance on behalf of the respondent Secretary of State. The representative then acting for the appellant took the view that he did not wish to call the appellant to give evidence but instead wished to move immediately to closing submissions. This also was a mistake, and recognised as such by the First-tier Tribunal Judge, who indicated that she would be assisted by oral testimony from the appellant. There is a brief paragraph within the decision in which the First-tier Tribunal Judge sets out in summary form the evidence that was given by the appellant.

3. The First-tier Tribunal Judge correctly identified the requirements of Regulation 10(5) and that the material date for carrying out the analysis would be the date when decree absolute was pronounced by the family court in Brentford, namely July 2014. The judge did the best she could by dealing with the admittedly limited documentation before her. She indicated in paragraph 12, "I conclude that the documents are insufficient on their own to establish that Ms Tavares was self-employed at that date". I should interpose that Ms Tavares was at one stage the wife of the appellant and the appellant's claim is parasitic upon her status.
4. The judge then analysed the basis upon which Ms Tavares purported to have paid tax in relation to her self-employed earnings. On any account, even taken at its highest, Ms Tavares' claim to have been involved in appropriate economic activity was speculative at best. It would appear that the way in which she earned a living was by purchasing cheap or discounted goods and then selling them on at a modest profit to her friends and acquaintances in this country or, in some instances, overseas.
5. The judge then analysed what documentation there was from the Inland Revenue and considered what, if anything, was being earned at that time. She concluded in a clear finding at paragraph 16 that "these figures are insufficient to establish that they reflect genuine self-employment activity as opposed to being engineered for the purpose of facilitating either her own or the appellant's immigration applications".
6. The judge then made comments as to the genuineness or otherwise of certain documentation that was placed before her but went on to say at paragraph 17 that even if the documents had been genuine she was not satisfied that they indicated the appropriate level of economic activity and income that was claimed. The judge's conclusion at paragraph 21 was that, if genuine, "the activity described is on such a small scale as to be regarded as marginal and ancillary and insufficient to make Ms Tavares a qualified person for the purposes of Regulation 6".
7. It was for those reasons that the judge came to the conclusion that the appellant had not established that he met the requirements of Regulation 1(5)(b) in order to show he was residing in the United Kingdom at the date of the termination of his marriage and he retained a right of residence when he and Ms Tavares were divorced.

8. It seems to be common ground that the First-tier Tribunal Judge was faced with a very difficult task in the light of (a) the paucity of the evidence and (b) the fact that the respondent was not represented. Criticism was made of the First-tier Tribunal Judge for approaching the matter in a manner inconsistent with the terms of the refusal letter. I am not convinced that that is a legitimate complaint because the refusal letter was couched in much broader terms than the limited way claimed on behalf of the appellant.
7. However, I have had shown to me today (and the Secretary of State's representative has had a very brief opportunity of considering it) documentation presented by the appellant which seems to have its origins in the HMRC. This potentially indicates that the level of economic activity of Ms Tavares was somewhat more than the First-tier Tribunal Judge understandably concluded was the case.
8. I am narrowly persuaded that there may well be sufficient material before me to indicate that there was an error in the First-tier Tribunal Judge's approach in that she took a view on the documentation which, as we now know from subsequent documentation, may not have been open to her. Without a full examination of this new documentation it is impossible to come to any concluded view. Nonetheless, the interests of justice require that this matter is looked at afresh even though a review of the matter could lead to exactly the same disposal as before.
9. Therefore, I allow this appeal and remit the matter to be heard *de novo* by a First-tier Tribunal Judge at which time the additional documentation which has been placed before the Upper Tribunal today can be given the level of careful scrutiny which it undoubtedly deserves in the context of testimony from the appellant tested in cross-examination.

Notice of Decision

The appeal is allowed. Matter remitted to First-tier Tribunal.

No anonymity direction is made.

Signed *Mark Hill*

Date 20 February 2016

Deputy Upper Tribunal Judge Hill QC