



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

Appeal Number: EA/00404/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> August 2017**

**Decision & Reasons  
Promulgated  
On 26<sup>th</sup> September 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR MICHAEL ANUEBUNWA  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Waithe of Counsel, instructed by SLA Solicitors  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on 25<sup>th</sup> November 1979. On 31<sup>st</sup> January 2011 he was issued with an residence card under the Immigration (European Economic Area) Regulations 2006 which was due to expire on 31<sup>st</sup> January 2016. On 29<sup>th</sup> June 2015 he sought re-entry into the United Kingdom under the said residence card but the respondent revoked that

card and refused admission to the United Kingdom in accordance with Regulation 9. The detailed reasons are set out in the Notice of Immigration Decision dated 29<sup>th</sup> June 2015. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge on 4<sup>th</sup> November 2016. In a determination dated 2<sup>nd</sup> December 2016 the appeal was dismissed. The appellant appeals with leave against that decision to the Upper Tribunal on the general basis that the Judge overlooked or misinterpreted key evidence.

2. Thus the matter comes before me to determine the issue as to whether there is in fact any error of law in the decision.
3. The starting point clearly is the decision of the respondent dated 29<sup>th</sup> June 2015 and it is in these terms:-

“You have sought admission to the United Kingdom under EC law in accordance with Regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of Sabrina Chaudhry, a German national. You were issued with a residence card by the Home Office on 31<sup>st</sup> January 2011 valid until 31<sup>st</sup> January 2016. However, on your arrival back in the United Kingdom on 20<sup>th</sup> January 2013 your spouse could not be contacted. Further enquiries have lead me to be satisfied that your relationship with Ms Chaudhry is no longer subsisting, as she is no longer in the United Kingdom exercising her treaty rights and that by your own admission you are now in another relationship with a different person. In light of the fact that you no longer qualify as an EEA family member of an EEA national, I revoke your residence card and refuse you admission to the United Kingdom in accordance with Regulation 19.”

4. The notice specifies that an appeal can only be brought on the following ground, namely that “the decision to remove you breaches your rights under the EU Treaties in relation to entry to, or residence in, the United Kingdom”.
5. Mr Clarke, on behalf of the respondent, raises concerns as to whether the context of that decision was fully appreciated by the First-tier Tribunal Judge. The Judge has indicated in paragraph 4 of the determination that the appellant bears the legal burden of proof from start to finish and the standard of proof is on the balance of probabilities. This is course is a decision of the respondent and it is for the respondent to justify the matter, particularly should the appellant raise a prima facie case, showing that indeed he does qualify for residence.
6. The point at issue is, by consent, a very narrow one. He was married to Ms Chaudhry and divorced from her by decree absolute on 11<sup>th</sup> June 2014. The issue is whether at the time of divorce Ms Chaudhry was exercising EEA treaty rights. If so then under the Regulations the appellant gained a

right of residence. The marriage must have been in existence for three years prior to the divorce although it was not a requirement that the appellant have lived with the sponsor throughout that period. The judge in the determination seems to be concerned with whether or not Ms Chaudhry exercised her treaty rights over that period. That is not a requirement upon the narrow basis which is relied upon.

7. The criticism is made of the determination that the Judge has failed to appreciate the narrow issue, namely whether Ms Chaudhry was in the United Kingdom and exercising her treaty rights at the time of the decree absolute, and has in the circumstances, and in any event, failed to consider all the evidence that has been presented. Mr Clarke fairly concedes that that is a meritorious challenge to the decision such that it should be remade in any event.
8. Thus the real question which falls to be considered upon such a rehearing of the appeal is whether or course Ms Chaudhry was in the United Kingdom at the time of the divorce and if so whether she was exercising her treaty rights. If the appellant raises a prima facie case upon the evidence that such is so the burden is upon the respondent to justify why the decision is to be maintained under the Regulations.
9. In all the circumstances I set aside the decision to be remade. In accordance with the Senior President of the Tribunal's direction I remit the matter to the First-tier Tribunal for a rehearing, no facts to be preserved.

### **Notice of Decision**

The appeal is allowed in the Upper Tribunal to the extent that the decision of the First-tier Tribunal Judge is set aside, the appeal is to be reheard in the First-tier Tribunal and a fresh decision made.

No anonymity direction is made.



Signed

Date 22 August 2017

Upper Tribunal Judge King TD