



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

**Appeal Number: EA/00650/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 December 2017**

**Determination Promulgated  
On 13 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

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

**Appellant**

**-and-**

**DOZIEM OKORO**

**Respondent**

**Representation:**

For the Appellant: Mr. I. Jarvis, Home Office Presenting Officer  
For the Respondent: Mr. I. Khan of counsel

**DECISION AND REASONS**

**History of Appeal**

1. The Respondent, who was born on 19 December 1974, is a citizen of Nigeria. On 21 June 2011 the Respondent was issued with a residence card as the family member of an EEA national, which was valid until 21 June 2016. On 16 June 2015 the Respondent applied for a permanent residence card as a confirmation of his right to remain in the United Kingdom. His application was refused on 7 January 2016.

2. The Respondent appealed against this decision and First-tier Tribunal Judge Majid allowed his appeal in a decision promulgated on 20 March 2017. The Appellant appealed against this decision and First-tier Tribunal Judge Ford granted her permission to appeal on 25 September 2017 on the basis that First-tier Tribunal Judge Majid had not identified the evidence on which he based his finding that the Respondent's former spouse had been exercising her Treaty rights at relevant times and over relevant periods of time.

### Error of Law Hearing

3. The Home Office Presenting Officer and Counsel for the Respondent made oral submissions and I have referred to their submissions, where relevant, in my findings below.

### Findings

4. On 15 June 2015 the Respondent had applied for a permanent residence card on the basis that he had lived in the United Kingdom for a continuous period of five years and at the end of this period of time he had retained a right of residence. The Respondent married his French wife on 29 May 2010 and a decree absolute was made at the Family Court at Bromley on 28 May 2015. The skeleton argument, dated 17 January 2017, indicates that this was the basis upon which his case was argued at the hearing before First-tier Tribunal Judge Majid.
5. However, this was not apparent from the decision reached by the First-tier Tribunal Judge. In paragraph 2 of his decision he did not provide any particulars of the refusal letter and in paragraph 3 of his decision he made a general reference to the Immigration Rules, as opposed to the EEA Regulations.
6. In order to qualify for a retained right of residence under regulation 10(5) of the EEA Regulations, on account of this divorce, the Respondent had to establish that he had been married to his EEA spouse for at least three years and there was no dispute that this was the case. In addition, he had to show that they had both lived in the United Kingdom for at least a year of this time. At the hearing before me counsel for the Respondent referred to a tenancy agreement which was at page 423 of the Respondent's Bundle. This was dated 1 March 2014 and named both the Respondent and his wife. However, this evidence was not referred to by First-tier Tribunal Judge Majid in his decision and, therefore, it was not possible to ascertain whether he accepted that this evidence was reliable and relevant.
7. In addition, in paragraph 12 of his decision First-tier Tribunal Judge Majid stated that there were only two issues in the appeal – whether the [Respondent] was exercising his right of movement as a treaty worker and whether his wife was covered by this right under the Regulations. This indicated a fundamental misapprehension on the part of the First-tier Tribunal Judge, as it was the Respondent's wife who was said to be exercising her Treaty rights and the Respondent's right to a residence card was dependent upon her doing so.
8. First-tier Tribunal Judge Majid also had to consider whether she had been exercising her Treaty rights for the requisite period of time and also whether she

had been exercising them at the date of their divorce. There is nothing in the decision to confirm that he came to any decision on these issues. At most, in paragraph 13 of his decision, he stated that the Respondent's counsel had indicated that the required evidence was on pages 6 – 79 [of the [Respondent's] Bundle] showing that the spouse was working at the time of the divorce. However, as he did not refer to any particular evidence, it was not possible to ascertain whether his assertion was correct.

9. Furthermore, he did not identify any particular evidence which indicated that she had been exercising her Treaty rights for the requisite time to entitle the Respondent to a retained or permanent right of residence. At today's hearing, counsel for the Respondent sought to rely on the totality of the evidence before First-tier Tribunal Judge Majid. However, as the First-tier Tribunal Judge had failed to address all the matters in issue and had not provided any reasons for finding that the Respondent had met the requirements of the EEA Regulations, his decision was not sustainable and did not indicate that he had properly applied the EEA Regulations when reaching his decision.
10. It was not sufficient for the First-tier Tribunal Judge to state that he had read all the documents and taken into account oral evidence and submissions, when there was no reference to the content of this evidence or the submissions. I accept that the First-tier Tribunal Judge does not have to refer to every piece of evidence but he does have to indicate his findings in relation to the evidence which is relevant to the basis upon which the appeal was allowed.
11. Furthermore, it was also unclear what discretion the First-tier Tribunal Judge was referring to in paragraph 16 of his decision or the basis for finding in paragraph 19 of his decision that "wherever one feels that the cases misses the point marginally judicial discretion should help him in light of the factors detailed above".
12. As a consequence, I find that there were arguable errors of law in First-tier Tribunal Judge Majid's decision.

### Decision

13. The appeal is allowed.
14. The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judge Majid.

Date: 11 December 2017

**Nadine Finch**

Upper Tribunal Judge Finch