



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/10514/2016

THE IMMIGRATION ACTS

Heard at Field House
On 12 May 2017

Decision & Reasons Promulgated
On 1 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

IFEANYICHUKWU JOSEPH OHAMEKAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Joshi, instructed by A Bajwa & Co Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Moan dismissing his appeal against the decision of the respondent made on 19 August 2016 refusing his application for permanent residence.

2. The appellant is a citizen of Nigeria born on 6 June 1974. He entered the UK in 2007 on a student visa. He married a French national, Vanessa de Faria on 7 June 2010. He was issued with a residence card between March 2011 and March 2016. The appellant and his spouse divorced on 19 February 2014.
3. On 9 February 2016 the appellant applied for permanent residence. The respondent refused this application on 19 August 2016. It was his appeal against this decision that was dismissed by First-tier Tribunal Judge Moan.
4. The grounds upon which permission to appeal was granted asserted that the judge made a mistake regarding the material fact as to whether or not the appellant's former spouse was a qualified person at the date of the dissolution of their marriage on 19 February 2014. The judge concluded that she was not satisfied that the former spouse was exercising treaty rights at the date of the divorce [18] but the grounds argued that this was inconsistent with the finding at [8] that she had paid tax up to the end of the tax year 2014. It was also noted that the evidence from HMRC in the appellant's bundle gave an end date with the former spouse's employment as 28 February 2014.
5. Ms Joshi argued that the judge overlooked the evidence from HMRC dated 21 September 2016 giving the appellant's employment, pension and benefits history. This evidence showed that the appellant worked for MGNT Limited. It gave her reference number, the start date of her employment as 1 May 2013 and the end date as 28 February 2014. HMRC indicated that she was paid £5,416 for that period of employment. Ms Joshi argued that the end date of the wife's employment postdated the divorce.
6. Ms Joshi referred to the judge's finding at paragraph 12. The judge said as follows:-

"The Appellant must provide evidence that his wife was working in 2014. The guidance makes it clear that the Appellant should provide three months' of wage slips. He did not provide payslips for the 3 months prior to his divorce in 2014. He is not able to show that she was a qualified person at the time of his divorce."
7. Ms Joshi submitted that it was not clear what guidance the judge was referring to. She did not accept that there was a requirement for the appellant to provide three months' wage slips for his wife. She submitted that the appellant provided his former wife's P60s and the HMRC work history which clearly indicated that she was a qualified person at the date of the respondent's decision.
8. Mr Wilding submitted that the HMRC confirmation of employment does not show on a balance of probabilities that the appellant's wife was working at the date of the divorce. All it shows is that she was in employment but it does not show she was actually working at the date of the divorce. The bank statements which the judge also took into account did not show that she was working on 28 February 2014 when she ceased working with MGNT Limited.

9. Mr Wilding explained that the guidance the judge was referring to was guidance issued by the respondent to case workers advising the what evidence was required when an applicant made an application for permanent residence.
10. Mr Wilding argued that this was a perversity challenge. The appellant had to show that no judge would find that his wife was not in employment at the date of the divorce. He submitted that the modest amounts she earned added strength to the case that she was not working at the date of the divorce.
11. I was not persuaded by Mr Wilding's arguments. The appellant's former wife's earnings were not in issue. The issue in this case was whether she was a qualified person at the date of the dissolution of their marriage on 19 February 2014. There was overwhelming from the HMRC that the appellant's former wife ceased employment on 28 February 2014, a date which post-dated the divorce. The judge erred in law in overlooking this evidence.
12. I find that the judge erred in relying on a guidance which he did not identify and which according to Mr Wilding, was advice to Home Office caseworkers and therefore not pertinent to the judge's decision.
13. In the light of these errors I find that the judge's decision cannot stand. I set it aside and remake the decision.
14. On the evidence provided by HMRC I find that the appellant's wife was in employment at the date of their divorce which was 19 February 2014. She was therefore a qualified person at the date of the dissolution of their marriage on 19 February 2014.

Notice of Decision

15. I allow the appellant's appeal.

No anonymity direction is made.

Signed

Date: 31 May 2017

Deputy Upper Tribunal Judge Eshun