



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

Appeal Number: IA/19733/2015

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision &  
Promulgated**

**Reasons**

**On 18<sup>th</sup> April 2017**

**On 10<sup>th</sup> May 2017**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

**Between**

**MR.NIMA RAHBAR.  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mrs Chadhery, Counsel, instructed by Verax Solicitors, Stockport.

For the Respondent: Mr McVeety, Home Office Presenting Officer.

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Iran.
2. On the 18 December 2008 he married Michaela Novotna, a European national.

3. On the basis he was the family member of European national exercising Treaty rights he was issued with a residence card on 20 November 2009.
4. In June 2010 he returned to Iran. He returned to the United Kingdom in June 2012.
5. The appellant and his wife are divorced, the decree nisi being issued on 31 October 2014 and becoming absolute on 16 December 2014.
6. On 22 December 2014 application was made on his behalf for confirmation of his right to reside permanently under Treaty provisions. These are incorporated domestically by the Immigration (EEA) Regulations 2006 (the 2006 regulations). This was refused on the basis he had not produced the divorce decree or demonstrated that his spouse was exercising Treaty rights. Consequently, his application was refused.
7. To have a retained right of residence following his divorce then by regulation 10(5) he needed to provide evidence that his former spouse was exercising Treaty rights at the time of divorce. He also needed to show that the marriage had lasted for at least three years with at least one year being spent in the United Kingdom. Finally, the appellant needed to show he was in employment or self-employment or self-sufficient as if he were an EEA national.
8. Under regulation 15(1)(f) it was necessary to show that his former spouse had continuously exercised free movement right up to the point of divorce and that he himself had been exercising the equivalent of Treaty rights since then, collectively to cover a continuous five-year period

#### The First tier Tribunal

9. His appeal was heard by First-tier Judge Lloyd and was dismissed. The judge found that the appellant could not show he had resided in the United Kingdom for a continuous period of five years as he had been in Iran from June 2010 to June 2012. Furthermore, the evidence did not establish his wife had been exercising Treaty rights for a continuous period of five years.
10. The judge went on to consider paragraph 276 ADE of the immigration rules which deals with private life and then proceeded to make a freestanding article 8 assessment.

#### The Upper Tribunal

11. Permission to appeal was sought on the basis failed to consider retained rights a residence provided for in regulation 10 . Furthermore, the judge was wrong to go on to consider human rights in light of the decision of Armremour and others (EEA appeals: human rights) [ 2015] UK UT 466 and TY(Sri Lanka) v Secretary of State for the Home Department [2015] EWCA Civ 1233.
12. A judge of the First-tier Tribunal refused permission but on a renewed application permission was granted by an Upper Tribunal judge. This was on the basis the judge did not adequately reason the dismissal under regulation 10.
13. The respondent lodged a rule 24 response opposing the appeal. The notice questioned how it could be argued that the judge was required to consider regulation 10 as a stand-alone matter when the application was made for a permanent right of residence. It was also not clear how he satisfied the evidential requirements of paragraph 10 (5) or (6).
14. At hearing Mrs Chadhery accepted that the appellant could not meet the requirements to obtain confirmation of a permanent right to reside under regulation 15. However, it was contended the judge did not deal with regulation 10.

### Consideration

15. An issue arising under regulation 10 is the meaning of `termination of a marriage'. In this case, the decree nisi was made on 31 October 2014 and became absolute on the 16th December 2014. The appellant had difficulties in obtaining information about his former wife's employment. In this regard the date of the termination marriage was crucial in relation to the evidence relating to employment.
16. The presenting officer contended that it was the decree absolute which terminated the marriage and there were no wage slips covering this period. Consequently, although the judge did not consider regulation 10 the decision would be the same.
17. I do find there is a material error of law in the decision in that the judge refers to regulation 15 but does not deal with regulation 10. The judge also erred in carrying out a freestanding article 8 assessment. However, as this was dismissed it makes no material difference. I do agree with the presenting officer that the marriage ends upon the decree absolute rather than nisi. This would be logical because the decree nisi allows a period when the grant of a divorce can be objected to. Aside from

this, there is no evidence that the appellant is exercising Treaty rights.

Decision.

18. The decision of First-tier Judge Lloyd dismissing the appellant's appeal materially erred in law. I have remade the decision but the outcome remains the same, namely the appeal is dismissed.

Deputy Judge Farrelly

6<sup>th</sup> May 2017