



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00001/2018

THE IMMIGRATION ACTS

Heard at Liverpool
On 25 July 2018

Decision & Reasons Promulgated
On 06 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR CHARLES BAAYE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sinker, Counsel, instructed by Bhogal Partners Solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Ghana. On September 25, 2017 the appellant lodged an application under Regulations 10 and 15 of the Immigration (European Economic Area) Regulations 2016 for permanent residence as the former family member of an EEA national who had permanent residence on the date of termination of the marriage.
3. The respondent refused this application on December 1, 2017 on the basis the appellant had failed to demonstrate the EEA national had been exercising treaty rights on the

date of termination of the marriage and in particular the respondent was not satisfied the EEA national had been exercising treaty rights for the tax years 2014 to 2016.

4. The appellant lodged grounds of appeal on December 7, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 36 of the 2016 Regulations.
5. His appeal came before Judge of the First-tier Tribunal Siddiqi (hereinafter called “the Judge”) on February 19, 2018 and she dismissed the appellant’s appeal under the EEA Regulations in a decision promulgated on March 2, 2018.
6. The appellant appealed this decision on March 16, 2018 on the grounds that the Judge should adjourned the case and issued an *Amos* direction (*Amos v Secretary of State for the Home Department* [2011] EWCA Civ 552).
7. Judge of the First-tier Tribunal Chohan refused permission to appeal on April 2, 2018 finding the Judge had adequately dealt with the issue between paragraphs 13 and 15 of her decision.
8. The appellant renewed his grounds of appeal and Upper Tribunal Judge Allen granted permission to appeal on May 29, 2018 finding it, on balance, arguable that the Judge erred as claimed.

PRELIMINARY ISSUES

9. There had been no Rule 24 response filed by the respondent, but Mr McVeety confirmed the application was opposed.

SUBMISSIONS

10. Mr Sinker adopted the grounds of appeal that had been prepared by previous counsel. He submitted that whilst the application to adjourn and to seek an *Amos* direction was made late this should not be a reason to refuse the request. He accepted that the appellant had no idea whether any information would be revealed by such a direction but he submitted the case should have been adjourned for the enquiry to be made. The importance of that evidence was that the Judge had made adverse findings and the additional evidence from HMRC may have assisted the appellant with his application. He submitted there had been procedural unfairness.
11. Mr McVeety submitted there had been no error and that the Judge had approached the issue of both an adjournment and an *Amos* direction correctly. There was ample evidence before the Judge that the appellant knew his former spouse did not earn enough money to pay either tax or National Insurance. This was recorded in the Judge’s decision at paragraph 12(d) and at paragraph 28(d). The Judge concluded that the sponsor was reliant on the appellant’s earnings when they were together and the evidence adduced suggested she earned under £70 a week in subsequent years. In such circumstances, nothing would have been achieved by directing the respondent to contact the tax authorities because on the appellant’s own evidence his former wife had not paid tax or National Insurance and there was evidence she relied on benefits such as housing benefit.

12. Mr Sinker then referred me to paragraph 22 of the Judge's decision in which the appellant had stated that his former wife had actually earned more than the data suggested but accepted he had no knowledge what such an enquiry would reveal.
13. Having heard submissions I indicated to the representatives that I was not satisfied there was an error in law and I advised them that I would issue a written decision due to the lack of recording facilities at the court hearing.

FINDINGS

14. The grounds of appeal are concerned with the issue of whether there was procedural unfairness when the Judge refused to adjourn the hearing and issue an *Amos* direction. The decision of *Amos* concerned the requirement for the respondent to make enquiries of HMRC under section 40 of the UK Borders Act 2007.
15. Previous counsel accepted that the former wife's earnings were low and the evidence submitted by the appellant was that he suspected the former wife may have earned more than the amounts disclosed on the papers. The grounds argued that if the respondent had been directed to contact HMRC then a better picture would be available to the Judge.
16. I agree with Mr McVeety that this was not a case where the Judge needed to adjourn for such evidence. Importantly, the Judge considered these issues in detail and set out between paragraphs 13 and 15 of her decision why she was refusing the adjournment.
17. Mr Sinker acknowledged it was a late application but more importantly the appellant's own evidence was that he did not believe she had paid any tax or National Insurance so any claim she may have earned more money was unlikely to be supported by any documents with HMRC.
18. This is not a case where there was no evidence before the Judge but it was a case where the Judge had evidence of low wages and was not persuaded the former wife was exercising treaty rights for the relevant period. There was evidence she was in receipt of housing benefit and it is pure speculation that her income may have been higher.
19. The issue I had to decide was whether the Judge should have adjourned and directed the respondent to make further enquiries, but I am satisfied on the evidence available the Judge reached a decision that was open to her and she did not err by adjourning the case for further evidence.

DECISION

20. There is no error in law and I dismiss the appeal.

Signed

Date 25/07/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as no fee was payable.

Signed

Date 25/07/2018

A handwritten signature in black ink, appearing to read "SPARIS". The signature is written in a cursive style with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis