Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **EA/00090/2017**

THE IMMIGRATION ACTS

At **Royal Courts of Justice**
on **26.11.2018**

Decision & Reasons Promulgated
On 30.11. 2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Luan BALIQI

appellant

and

Secretary of State for the Home Department

respondent

Representation:
The appellant in person
Mr N Bramble for the respondent

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Vereena Jones), sitting at Birmingham on 9 August, to dismiss an EEA appeal by a citizen of Albania, born 1984. Permission was granted by a first-tier judge on two grounds:

(1) the judge should have offered the appellant, who was unrepresented before her too, an adjournment so he could provide evidence of his ex-wife's financial standing as a 'qualified person' at the relevant date; and

(2) she did not allow for the ex-wife's being both a student and a self-employed person at the time in question.

2. History The appellant arrived in May 2011, when he met and moved in with his future wife, a Bulgarian citizen: in May 2012 they were married, and in May 2013 he got a residence card on that basis. However in November 2015 they separated and she issued a

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

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petition for divorce, on which a decree *nisi* was granted in December, with the decree absolute following on 2 February 2016.

3. In May 2016 the appellant applied for a permanent residence card, on the strength of his retained rights. On 5 January 2017 that was refused, and his ordinary card revoked: the reason given, in very general terms, was that he had not shown his ex-wife was a 'qualified person'.

4. **Law** At the time it was thought that the relevant date in a case of this kind was that of the decree absolute; but in *Baigazieva* [2018] EWCA Civ 1088 it was held to be the issuing of the petition. That decision came out on 20 April, and it, or the rule in it, was known to the judge, and to the appellant's former solicitors, who drafted the present grounds of appeal, and were acting for him at least till 15 March, when they made inquiries from the Home Office; but they said the appellant had known nothing about it.

5. That may be so; but, without going into what the appellant might reasonably have been expected to produce at the hearing, it is worth looking at what evidence he did produce, and whether the change in what was understood to be the relevant date had made any difference.

6. First, the judge accepted that the appellant's ex-wife had been a student for the whole of the 2015 – 16 academic year. However, as the judge noted, that entitled her to be considered as a 'qualified person' only so long as (see the Immigration (European Economic Area) Regulations 2016 reg. 4 (1) (d)), she was also a person who

> (ii) has comprehensive sickness insurance cover in the United Kingdom; and
>
> (iii) has assured the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's intended period of residence.

7. These were not criteria the appellant's ex-wife could satisfy; so clearly she could not be a 'qualified person' as a student, and needed to rely on her status as a self-employed person. The evidence before the judge about her self-employed status at the relevant time came from her own statement, and from another, produced by the Home Office, by an official of HM Revenue and Customs called Roger Drew, as well as from her bank statements from 12 December 2015 to 11 March 2016.

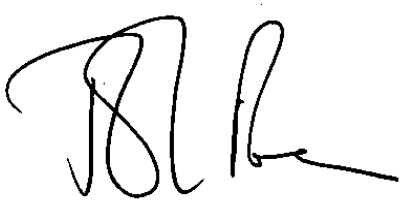
8. So far as self-employed income during that period was concerned, the judge accurately noted that there were payments of £245.26 in December from the University of Westminster (apparently for 'student ambassador' work), and £350 in January from another Bulgarian lady by the name of Savina Ivanova, for whom she had done some video work. The ex-wife's statement shows two further payments of £570 in all for photography she had done for Robert Martin between 15 January and 10 February; but that could not possibly have affected the position at the relevant date.

9. As Mr Bramble pointed out, these are all the sums mentioned by the ex-wife (see her paragraph 8) as received by her from self-employment "When Luan and I were undergoing divorce …". At least the first three came before the date of the decree

absolute, and there is nothing in the ex-wife's statement to suggest that she had more than occasional self-employed work during her year as a student. The figures before the judge could not possibly have shown she was self-supporting as a self-employed person.

10. The appellant's ex-wife had been exceptionally co-operative with him for someone in that situation, and, as he had to acknowledge, she might be expected to know best about what income she was getting. Regardless of what might have been expected from the appellant by way of dealing with the effect of *Baigazieva*, the best evidence he had been able, or was likely to be able to produce about his ex-wife's income fell far short of showing she was a 'qualified person' at the relevant date.

Appeal dismissed



(a judge of the Upper Tribunal)