



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/00582/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> August 2018

Decision & Reasons Promulgated  
On 5<sup>th</sup> September 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

FAHEEM BIN RAHIM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Heybrook of Counsel, instructed by Pioneer Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India seeking a residence card in confirmation of a retained right of residence as the former family member of [LQ] an EEA national. By a decision dated 4<sup>th</sup> January 2017 that application was refused.
2. The refusal was in relatively narrow terms.
3. The appellant married on 29<sup>th</sup> March 2012 with a Decree Absolute issued on 1<sup>st</sup> June 2016.

4. The respondent in the decision noted the various wage slips from Tayyibah Girls' School in respect of the former spouse covering the period of 31<sup>st</sup> July 2013 to 31<sup>st</sup> May 2014. Contact with the employer elicited the reply that the former spouse had left employment on 16<sup>th</sup> March 2016.
5. There was nothing however to indicate that the spouse was exercising EEA treaty rights as at the date of 1<sup>st</sup> June 2016 and on that basis permission was refused.
6. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Callow on 20<sup>th</sup> March 2018. In the determination promulgated on 9<sup>th</sup> May 2018 the appeal was dismissed.
7. In summary various documents were presented to show that the sponsor was exercising treaty rights at the date of divorce. The Judge however applied the principle in **Tanveer Ahmed** and determined that little weight could be attached to such documents and accordingly the decision of the respondent was upheld.
8. Challenge was made to the decision on the basis of the approach taken by the Judge.
9. However it is clear that this is a decision overtaken by legal events, in particular the decision in **Baigazieva v SSHD [2018] EWCA Civ 1088**. **Such** indicates that for the purposes of the relevant Regulation under the EEA Regulations the determining time to consider whether a sponsor was exercising EEA treaty rights is at that the date of the institution of divorce proceedings rather than at the completion of those proceedings. As such the interpretation has now been reflected in the most recent version of Regulation 10 of the Immigration (European Economic Area) Regulations 2016 as presented in 2018.
10. It was accepted therefore that the approach taken by the Judge to the calculation of the former spouse's exercise of treaty rights is fundamentally flawed such that the decision be set aside.
11. What requires to be established for the grant of retained rights is for the former spouse to have been exercising treaty rights until the institution of divorce proceedings. No challenge is made by the respondent to any of the other requirements. It is a narrow point which falls to be determined. There are no challenges taken in the refusal letter to the fact that the former spouse was exercising treaty rights by working at the Tayyibah Girls' School from 31<sup>st</sup> July 2013 to 16<sup>th</sup> March 2016. Mr Tufan points out that there is little by way of wage slips for the period after 31<sup>st</sup> May 2014. That may be so but no challenge has been made in the reasons for refusal on that basis. Indeed the e-mail from the girls' school has been produced confirming that the appellant's former wife worked at the school and left on 16<sup>th</sup> March 2016. I think it is reasonable to conclude on the balance of probabilities therefore that she worked for the requisite period.

12. Divorce proceedings were in fact instituted on 20<sup>th</sup> January 2016 at the Bury St Edmunds Divorce Unit and those proceedings were formally issued out of that unit on 27<sup>th</sup> January 2016.
13. In those circumstances it is abundantly clear that the appellant's former spouse was exercising treaty rights as at the time of divorce proceedings being instituted.
14. Therefore the appellant satisfies that particular requirement of the Regulations. As I have indicated no issues taken as to any other requirement that needs to be satisfied. It is accepted that all other requirements are satisfied.
15. In those circumstances therefore I find that the appellant does meet the Regulations as now current. The appeal is allowed such that the requisite residence card be issued.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'P. L. King', is enclosed within a thin black rectangular border.

Signed

Date 30 August 2018

Upper Tribunal Judge King TD