



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: EA/00692/2017

THE IMMIGRATION ACTS

Heard at: Field House  
On: 22 January 2018

Decision and Reasons Promulgated  
On: 31 January 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR NOHENSE OGBEIDE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Tampuri, Chancery CS Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria, born on 5 May 1978. He appeals with permission against the decision of First-Tier Tribunal Judge Turnock dismissing his appeal against the refusal by the respondent to issue him with a document confirming his right to residence under the Immigration (EEA) Regulations 2006. The appeal was decided on the papers.
2. On 13 October 2015 his earlier application for confirmation of his right to permanent residence was refused with a right of appeal. His subsequent appeal

was dismissed by First-Tier Tribunal Judge Bradshaw in a decision promulgated on 23 March 2016. His application for permission to appeal that decision was refused in August 2016.

3. His claim was made on the basis that he has retained a right of residence under Regulation 10(5)(a-c) and Regulation 15(1)(f) of the 2006 Regulations. He contends in particular that his former spouse was exercising Treaty rights in the UK from 2009 up until "her last date of divorce" [10].
4. It was not disputed that the appellant married his ex-wife on 20 February 2010 and that the marriage had subsisted for a period in excess of three years. The Judge also found that the couple resided in the UK for at least one year during the duration of the marriage.
5. Judge Turnock noted that the appellant needed to establish that his former spouse was a qualified person and that he was residing in accordance with the regulations at the point of divorce. Evidence was thus required that his former spouse was exercising Treaty rights when the decree was issued. The parties were divorced on 3 December 2013 [25].
6. The Judge noted that the current application and the subsequent appeal are to be determined on the basis of the evidence presented by the appellant on this occasion. The previous determination of the First-Tier Tribunal Bradshaw was not provided. The Judge stated at [19] that '... the absence of previous documentation, for example the previous Determination of the First-tier Tribunal are not, therefore essential'.
7. Judge Turnock noted that P60 certificates were produced relating to his former spouse for 2011, 2012 and 2013. He also produced wage slips relating to his former spouse for 25 November 2013; 23 December 2013; 30 September 2013 and 28 October 2013.
8. He stated at [26] that, as noted by the respondent, the only evidence of the appellant's former spouse for the tax year 2013-2014 is that she received UK pensions and state benefits in the sum of £142 in UK Pensions and State benefits only.
9. He then had regard to the decision in Begum (EEA: Worker: Jobseeker) [2011] UKUT 275. He was not satisfied that the former spouse was exercising Treaty rights in December 2013 at the date of divorce. The evidence did not establish that she was either a worker (employed or self employed) or a jobseeker at the relevant time.
10. On 4 November 2017, First-Tier Tribunal Hodgkinson granted permission to appeal. There was no indication as to why the relevant payslips relating to his ex-spouse spanning the date of divorce were not taken into account or were not accepted as genuine. Further, it was arguable that there was an erroneous finding with reference to the sponsor's actual earnings. The Judge's indication that the only evidence of the sponsor's income for the tax year 2013-2014 was that she received UK pensions and state benefits of £142 was arguably inconsistent with the finding of the Judge at [35] where he identified the presence of payslips spanning the date of divorce.

11. Mr Tampuri relied on the grounds of appeal. He contended that the Judge should have made clear and logical findings in respect of the wage slips which related to the appellant's ex-spouse, as set out at [35]. He did not give any reason why the evidence of her employment as at the date of divorce was not taken into account.
12. Nor did the Judge make a finding as to whether the documents were genuine and sufficient, genuine but not sufficient, or not genuine. He referred to the witness statement on behalf of HMRC dated 1 December 2015 at J1. AT J2 his ex-spouse's taxable income in respect of UK pensions and other State benefits: 2013-14 was £142.
13. In reply, Mr Jarvis sought to uphold the decision of Judge Turnock. He referred to the earlier decision of First-tier Tribunal Judge Bradshaw promulgated on 23 March 2016 dismissing the appellant's appeal, also decided on the papers, against the refusal by the respondent to issue a permanent residence card.
14. He submitted that the Devaseelan guidelines should have been followed. The first determination is to be regarded by the second Immigration Judge as an authoritative determination of the issues of fact that were before the first appellate body. Generally the second Judge should not revisit findings of fact made by the first on the basis of evidence that was available to the appellant at the time of the first hearing. Those facts may be revisited in the light of evidence that was not available to the appellant at the time of the first appeal.
15. Mr Jarvis referred to Judge Bradshaw's decision, promulgated on 23 March 2016, where he found that no documentation was submitted from Inland Revenue confirming self employment of the EEA national [13].
16. Judge Bradshaw noted that with the appellant's bundle of evidence there were four principal wage slips from Clear Cleaning Ltd in respect of the EEA national, dated 30 September 2013, 28 October 2013, 25 November 2013 and 23 December 2013 [14].
17. He also noted that there was a letter from HMRC dated 5 January 2016 which stated that records showed that the EEA national was registered as self employed from 31 January 2010 to 6 April 2013. The letter stated that registration as a self employed person does not imply for any purpose that HMRC has accepted the employment status as self employed and that the employment status is determined by the terms and conditions under which the individual works at any time [15].
18. Judge Bradshaw noted from the respondent's bundle that there was an extract from Clear Cleaning Ltd's filing at Companies House between June 2007 and December 2013, the accuracy of which was not doubted [16]. The final entry is 19 December 2013 which specifies "Final gazette dissolved by compulsory strike off." Notwithstanding this, the entry on the original payslip dated 23 December 2013 for the EEA national has been lodged on behalf of the appellant. He noted that as far back as 18 October 2011 there was an entry of statement of administrators' proposal, moving on to 31 August 2012 with "appointment of a voluntary liquidator" and an entry on 19 September 2012, liquidators' statement of receipts and payments.
19. There was also a copy of a witness statement from an HMRC employee dated 1 December 2015 in respect of the EEA national which covered her UK pensions and

other State benefits, self employment, and “pay as you earn”. In respect of the self employment section for the year 2012-13, in the “description of trade” it specified “nil shown” and the same information applied for the year 2013-14.

20. In the section “pay as you earn” for 2012-13, and 2013-14 it is specified that there is “no employment recorded” and that “records show a claim to benefits.” Judge Bradshaw stated that there was no reason for him to doubt the accuracy of the witness statement from HMRC.
21. In the circumstances, he concluded that there is doubt about the wage slips for the EEA national lodged on behalf of the appellant. There were no bank documents lodged which showed that the relative salary payments were paid into the bank account of the EEA national [20].
22. In the circumstances, he found that the appellant had failed to provide evidence demonstrating that he meets the requirements under the Regulations.

### Assessment

23. The appellant elected to have both his appeals before the First-tier Tribunals decided on the papers without a hearing.
24. In his recent appeal he produced as part of his former spouse's employment, the same four principal wage slips identified by Judge Bradshaw. Accordingly these were the same payslips produced and relied on.
25. Mr Jarvis submitted that Judge Turnock came to the correct conclusion despite having paid no regard to the earlier decision of Judge Bradshaw.
26. Judge Turnock noted with regard to the evidence produced, that his former spouse received UK pensions and state benefits in the sum of £142 for the tax year 2013-2014 [39]. He also referred at [35] to the wage slips that the appellant produced. It turns out that these were the same payslips which had been produced to Judge Bradshaw at his earlier appeal decided on the papers on 23 March 2016.
27. It is correct that Judge Turnock did not refer to these slips when concluding that it had not been established that the sponsor had been exercising Treaty rights at the date of the divorce.
28. However, having regard to the comprehensive analysis of Judge Bradshaw justifying his conclusion that there was doubt about the wage slips in the light of the documentation produced from Companies House, as evidenced by the compulsory strike off, particularly given that there were no bank statements lodged showing the relative salary payments, that finding of fact stood as there had been reliance on the same doubtful evidence and no additional evidence was produced before judge Turnock to dispel such doubt.
29. In the circumstances, Judge Turnock was bound to conclude that there was doubt about the wage slips for the EEA national. That was particularly so, given the fact that there were still no bank statements produced showing that the relative salary payments were paid into the bank account of the sponsor.
30. There has accordingly been no material error.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The decision shall accordingly stand.

No anonymity direction made.

Signed

Date 30 January 2018

Deputy Upper Tribunal Judge C R Mailer