



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02450/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 11 July 2018

Decision and Reasons Promulgated  
On 12 July 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ALPHA OMAR JALLOH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr E. Akohene of Afrifa and Partners Solicitors  
For the respondent: Mr D. Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 26 October 2015 to refuse to issue a residence card recognising a retained right of residence as the former spouse of an EEA national. The sole reason for refusal was that the appellant had failed to produce evidence to show that the former EEA national spouse was exercising rights of free movement at the date of the divorce on 25 March 2014.
2. The appellant appealed to the First-tier Tribunal, which made a direction for the respondent to produce records of the EEA national's payments to HMRC. First-tier Tribunal Judge Coutts accepted that the records showed that the former EEA national spouse earned a gross income of £17,885.37 in the tax year 2013-2014 [11]. However, the judge concluded:

- “19. The only reliable information I have before me are the records from HMRC and these just give global figures for the tax year 2013-2014 for the sponsor with two employers and not whether her employment was continuous throughout that period.
20. I therefore have to conclude that the appellant has not discharged the burden upon him to show that the sponsor was exercising treaty rights on 25 March 2014.”
3. It is not necessary to set out the appellant’s grounds of appeal to the Upper Tribunal because Mr Mills accepted that the decision involved the making of an error of law. The judge’s decision either (i) applied too high a standard of proof; or (ii) was perverse in light of the evidence. He urged me to set aside the decision and to remake the decision and allow the appeal. In light of this concession, it was not necessary for Mr Akohene to make any submissions.
4. I find that Mr Mills’ concession is sensible and clearly correct. The appellant only had to prove his case on the balance of probabilities. The evidence from HMRC reflected an average annual income for the tax year 2013-2014, which suggested that it was more likely than not that the appellant’s former spouse was exercising rights of free movement at the date of the divorce. If the income had been nominal, there might have been some question as to whether she was in employment for the whole of the tax year, but it was not. To require the appellant to prove his case with any greater degree of certainty amounted to an error in the application of the standard of proof. I conclude that the First-tier Tribunal decision involved the making of an error of law for the reasons given by Mr Mills.
5. I am satisfied that the evidence from the HMRC was sufficient to show on the balance of probabilities that the appellant’s former spouse was likely to be exercising rights of free movement at the date of the divorce on 25 March 2014. As such, the appellant meets the requirements of regulation 10(5) of The Immigration (European Economic Area) Regulations 2006. This was the only reasons for refusal. As such, the appeal is allowed.

## DECISION

The First-tier Tribunal decision involved the making of an error of law

The decision is set aside

The appeal is remade and ALLOWED under the EEA Regulations 2006.

Signed  Date 11 July 2018  
Upper Tribunal Judge Canavan