



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/03826/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2017**

**Decision & Reasons
Promulgated
On 16 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MR GBENGA MICHAEL SHOYEMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Idris, Messrs Rees Myers Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria born on 1 January 1979, appeals with permission against a decision of Judge of the First-tier Tribunal Miller who in a determination promulgated on 24 March 2017 dismissed his appeal against a decision of the Secretary of State made on 4 December 2015 to

refuse his application for a permanent residence card as confirmation of a right to reside in the United Kingdom.

2. The appellant had been married to an EEA national but had been divorced on 2 February 2014. To qualify under the Immigration (EEA) Regulations 2006 he had to show that his wife had been exercising Treaty rights at the time of the divorce, that the marriage had lasted for 3 years and that he was currently in employment or economically self sufficient. He was required to show that he had resided in accordance with the regulations for a period of 5 years.
3. The appellant submitted a considerable bundle of documents, many of which are in the respondent's bundle which show the bank accounts for his business - GMS Investments of Kent. These cover the period from 17 February 2014 through until 12 June 2015. In the bundle supplied by the appellant for the hearing were approximately 40 pages of documents which indicated the work his wife had been undertaking in Britain.
4. The judge stated that there was insufficient evidence to show that he and his wife had worked in Britain. In particular, in paragraph 17, the judge, when considering the payments made in respect of the appellant's work here indicated that there were only three payments paid by BACS and said that he should have produced documentary evidence showing the period between May and September 2015. It is of note, however, that the appellant had made his application in July 2015 and that the Secretary of State in the letter of refusal specifically stated that what was required was evidence up to the date of application: that is the five year period from July 2010 to July 2015. The judge concluded that there was insufficient evidence to show that the appellant's wife and then he had been exercising Treaty rights over the relevant five year period. He therefore dismissed the appeal.
5. The grounds of appeal stated that the judge had erred in that he had not taken into account the appellant's company account statements which showed income payments from February 2014 to June 2015. They also referred to the pay slips for his wife provided at pages 33 to 71 of the appellant's bundle.
6. Mr Idris relied on those grounds of appeal.
7. Mr Avery commented that the judge had been placed in a difficult position because there were no clear schedules of work undertaken and payments made. He stated that the judge had looked at the evidence and although he had not specifically referred to the documentary evidence he had surely taken that into account. He accepted, however, that the judge had not given clear reasons why he did not accept that the totality of the evidence did not show that the appellant met the requirements of the Rules.

8. I consider that there is a material error of law in the determination of the First-tier Judge in that the judge did not appear to have taken into account the quantity of evidence produced relating to the earnings of the appellant's wife and then his own earnings after the divorce. Nor indeed has he given clear reasons for his decision not to accept the evidence that was submitted. I consider that these are a material errors of law.
9. Taking into account the Senior President's of Tribunals Practice Directions it is appropriate that this appeal be remitted to the First-tier Tribunal as there need to be further findings of fact made. To assist the judge I have directed below that proper schedules of the evidence submitted, cross-referenced between invoices and transfers to the bank statements showing the appellant's earnings together with the relevant evidence showing the earnings of the appellant's wife should be submitted.

Decision

This appeal is remitted to the First-tier Tribunal for a hearing afresh on all issues.

Directions

- (1) Within fourteen days of the promulgation of this decision the appellant will prepare and serve detailed schedules of evidence showing all relevant invoices, and BACS transfers, cross-references to payments into the appellant's account.
- (2) A separate bundle must be served showing the income of the appellant's wife over the period from July 2010 to February 2014, together with any further relevant evidence regarding the appellant's wife's earnings.

No anonymity direction is made.

Signed



Date: 13 January 2018

Deputy Upper Tribunal Judge McGeachy