



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/05861/2016

THE IMMIGRATION ACTS

Heard at Field House

On 3 September 2018

Decision & Reasons Promulgated

On 12 September 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

CHIOMA MOUREEN LIVINUS

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant:

Mr. P. Georget of counsel, instructed by Farani Taylor Solicitors

For the Respondent:

Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Nigeria. On 9 November 2015 the Appellant applied for indefinite leave to remain on the basis that she had retained a right of residence when she divorced her husband under regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 (“the EEA Regulations”). Her application was refused on 5 May 2016. She appealed

against this decision and First-tier Tribunal Judge Miles dismissed her appeal in a decision promulgated on 17 May 2018. First-tier Tribunal Judge Hollingworth granted her permission to appeal on 6 July 2018.

ERROR OF LAW HEARING

2. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

3. The Appellant applied for permanent residence on the basis that she had initially been granted a right of residence as the partner of an EEA national from 19 November 2010 until 9 November 2015 and that, when she divorced her husband within this period, she retained a right of residence. The period of her residence as a partner was not disputed by the Respondent but her right to retain her residence had been.

4. Regulation 10(5) of the EEA Regulations states that:

“A person satisfies the conditions in his paragraph if-

(a) he ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;

(b) was residing in the United Kingdom in accordance with these Regulations at the date of the termination;

(c) satisfies the condition in paragraph (6); and

(d) either—

(i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;

(6) The condition in this paragraph is that the person—

(a) is not an EEA national but would, if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or

(b) is the family member of a person who falls within paragraph (a)”.’

5. It was not disputed that the Appellant had married an EEA national on 6 March 2010, as she had previously been granted residence in this capacity. She had also provided a copy of a decree absolute which confirmed that she divorced her husband on 30 January 2015. Therefore, the marriage had lasted for at least three years. It was also not disputed that they had both resided in the United Kingdom for at least one year during their marriage.
6. In paragraph 18 of his decision, First-tier Tribunal Judge Miles also found that the Appellant’s former husband was self-employed as a plumber at the time of their divorce.
7. However, in paragraph 20 of his decision the First-tier Tribunal Judge found that the Appellant was not employed at the time of the divorce and that her employment with the NHS had not started until 1 August 2015 and that she had not registered as a jobseeker between the date of her divorce and 1 August 2015.
8. Counsel for the Appellant submitted that First-tier Tribunal Judge Miles had not given sufficient reasons for coming to this decision and had not taken into account all of the relevant evidence before him. In paragraph 12 of his decision the First-tier Tribunal Judge had noted that in both of her witness statements the Appellant had stated that she had commenced her most recent employment on 11 February 2015. In paragraph 16 he also noted that there was a letter from her employer, which confirmed that she had started work on this date. However, the First-tier Tribunal Judge decided not to give weight to this evidence but to rely on one payslip, dated 14 August 2015, which appeared to show that she had only received gross pay of £539.27 and taxable pay of £489.12 during the tax year up to 14 August 2015.
9. Taken on its own this payslip may have been capable of indicating that the Appellant had only just taken up her employment shortly before this date. However, the First-tier Tribunal Judge needed to consider all of the evidence before him and the pay to date entered on this payslip does not correlate with the fact that the payslip, dated 18 September 2015, just a month later, shows that she had been paid £5,719.44 during the tax year to date and the payslip, dated 16 October 2015, indicates that her gross pay to date had been £9,255.28. These anomalies should have been noticed and explored by the First-tier Tribunal Judge but were not even mentioned.

10. The anomalies in the payslips should also have been taken into account when considering whether to accept the Appellant's own evidence in her witness statements and the supporting employer's letter. As a consequence, the First-tier Tribunal Judge's findings in relation to regulation 10(6) were not sufficiently reasoned.
11. Therefore, I find that First-tier Tribunal Judge Miles did make errors of law in his decision.

Decision

- (1) The Appellant's appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Miles is set aside apart from his findings in paragraph 18 of his decision that the Appellant's husband was self-employed as a plumber at the time of the divorce and that his self-employment started at the end of April 2012.
- (3) The appeal is remitted for a *de novo* hearing on all other issues before a First-tier Tribunal Judge other than First-tier Tribunal Judge Miles.

Nadine Finch

Signed

Date 3 September 2018

Upper Tribunal Judge Finch