



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09414/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16th August 2018

Decision & Reasons Promulgated
On 4th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

RAMI YOUSSEF MHD E SELIMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lamb of David Tang & Company

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Eldridge made following a hearing at Hatton Cross on 4th December 2017.

Background

2. The appellant is a citizen of Egypt born on 9th July 1978. He was issued with a residence card on 25th August 2012 on the basis of his marriage to a Slovakian citizen

and on 22nd January 2016 he applied for a permanent residence card on the basis of his by then former marriage. The couple were divorced on 15th October 2015.

3. The respondent refused his application for a permanent residence card on 21st July 2016. She accepted that the marriage to his former wife had lasted for at least three years and that they had lived in the UK for at least one year during the marriage. For a variety of reasons however, the respondent concluded that it had not been established that the EEA national was a qualified person at the date of the divorce and accordingly the appellant did not have a retained right of residence.
4. The judge dismissed the appeal, finding that it had not been shown that the EEA sponsor was exercising treaty rights in the UK for the five years prior to the divorce. Neither was he satisfied that the appellant could show that he could meet the requirements of either Regulation 15(1)(b) or 15(1)(f).
5. The appellant sought permission to appeal which was initially refused by Judge Parkes but subsequently granted by Judge Rintoul who referred the parties to the decision of Baigazieva v SSHD [2018] EWCA Civ 1088.

The Hearing

6. At the hearing Mr Walker conceded that the judge had erred in law and that the decision ought to be reversed.
7. First, the judge did not apply the decision in Baigazieva which states that the relevant date for consideration as to whether the EEA national was exercising treaty rights is the date of the petition for the divorce rather than the decree absolute which in this case is April 2015.
8. Second, the judge had overlooked a letter from the Inland Revenue dated 22nd November 2017 which sets out the appellant's employment history in full between 2014 and 2017.
9. Mr Walker said that he no longer relied on the original reasons for refusal letter which raised doubts about the work undertaken by the EEA national and he accepted that the appellant had provided evidence that his former wife was employed as she claimed throughout the relevant period. He also said that the respondent no longer relied upon any issue in relation to whether the EEA national was in genuine and meaningful employment.
10. The EEA national has established that she was working between 2011 and 2016 and has provided a P45 and a P60 covering the date of the petition for divorce, i.e. April 2015 together with an accountant's letter. None of the evidence is now challenged by the Secretary of State. The accountant's letter also confirms her employment history from August 2014 until November 2015 and is consistent with the P45 and P60 produced in the respondent's bundle.

11. Accordingly, the appellant satisfies the requirements of Regulation 15(1)(f) of the Immigration (EEA) Regulations, i.e. his is a person who has resided in the UK in accordance with these Regulations for a continuous period of five years and was at the end of the period a family member who has retained the right of residence.
12. The judge erred in law in overlooking evidence establishing that the appellant was working as he claimed and in not applying the case of Baigazieva.

Notice of Decision

The original judge erred in law his decision is set aside it is remade as follows, the appellant's appeal is allowed.

No anonymity direction is made.



Signed

Date 25 August 2018

Deputy Upper Tribunal Judge Taylor