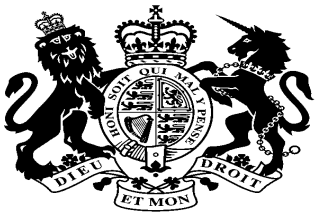

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00590/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Tuesday 12 March 2019	**On Friday 15 March 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

FAISAL ABBAS

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer
For the Respondent: Mr P Nath, Counsel instructed by Z Ranjha, Addison & Khan solicitors

DECISION AND REASONS

Background

1. By a decision promulgated on 10 December 2018, on the appeal of the Secretary of State, I found an error of law in the decision of First-tier Tribunal Judge M R Oliver promulgated on 11 October 2018 allowing the Appellant's appeal against the Respondent's decision dated 21 December 2017. The Respondent refused the Appellant's application for a residence card confirming his retained right of

residence as the former spouse of a Lithuanian national, Ms [RP], mainly on the basis that the marriage was one of convenience. In light of the error of law found in Judge Oliver's decision, I set aside the First-tier Tribunal decision and gave directions for a resumed hearing to re-make the decision. My error of law decision is annexed hereto for ease of reference.

2. The factual background to this appeal is set out at [2] of my error of law decision and I do not repeat it. Judge Oliver found, contrary to the conclusion of the Respondent, that the Appellant's marriage to Ms [P] was not a marriage of convenience. I preserved that finding ([20] of my error of law decision).

The Issues and the Legal Background

3. As I observed at [17] and [18] of my error of law decision, the issues which remain between the parties are quite narrow. They are, first, whether the Appellant satisfies the remaining provisions of regulation 10 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"). Regulation 10 is set out at [16] of my error of law decision and I do not repeat what I say at [17] and [18] concerning the further narrowing of that issue.

4. Mr Nath confirmed that it is the Appellant's case that he is now entitled to a permanent right of residence having spent five years as the spouse or former spouse of an EEA national exercising Treaty rights or with a retained right of residence under regulation 10. The relevant provision in that regard is regulation 15 of the EEA Regulations which reads as follows so far as relevant:

> "**Right of permanent residence**
>
> **15.** - (1) The following persons acquire the right to reside in the United Kingdom permanently—
>
> …
>
> (f) a person who—
>
> (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
>
> (ii) was, at the end of the period, a family member who has retained the right of residence."

5. Mr Kandola accepted that, the Appellant having been issued a residence card as Ms [P]'s family member on 13 June 2012 to 13 June 2017 and the divorce having commenced on 28 February 2017, the Appellant has to show that Ms [P] was exercising Treaty rights as at 28 February 2017, that he was residing before that time as her family member whilst she was exercising Treaty rights and that he was himself economically active as if he were an EEA national exercising Treaty rights in the period from 28 February 2017 to 13 June 2017.

6. As I identified at [10] to [11] of my error of law decision, there is also a potential issue regarding the Appellant's failure to produce Ms [P]'s original identity document. I set out the law in that regard in those paragraphs and gave a direction indicating that I would be assisted by having a copy of the application made leading to the issue of the residence card in 2012 so that it was factually clear whether the identity document was at that time produced to the Respondent. A copy of that application was not forthcoming prior to the hearing. However, at the hearing, Mr Kandola confirmed that the Respondent did have the identity document at that time and confirmed that, in light of the Tribunal's decision in Barnett (referred to at [10] and [11] of the error of law decision), he did not pursue that point. He was right to do so. Moreover, the Appellant has, with his supplementary bundle, provided a copy of the identity document of Ms [P] which was produced with the earlier application.

7. Accordingly, for the above reasons, the issue is whether Ms [P] and the Appellant were exercising Treaty rights (or economically active in the Appellant's case as if he were an EEA national) in the period 13 June 2012 to 13 June 2017. I therefore turn to what the evidence shows in that regard.

Evidence: Discussion and Conclusions

8. The Appellant complied with the direction to file further evidence in relation to the remaining issues. Unfortunately, that had not reached the Respondent. Mr Kandola was however able to peruse the relatively short bundle before and during the hearing and to make submissions on what that showed. Unfortunately, also, the short, written submissions made by the Appellant were not received by either the Tribunal or the Respondent (although I accept they were sent) but I and Mr Kandola had time to read those and Mr Nath made oral submissions based on those written submissions.

9. It was agreed that there was no need for the Appellant to give oral evidence. The focus of the issues is the documentary evidence during the relevant period. Unfortunately, the Appellant's evidence was organised in a way which was slightly unfocussed. For example, the written submissions focussed attention only on whether Ms [P] was exercising Treaty rights at the date of commencement of divorce and not for any earlier period. In relation to the Appellant, the submissions relied on one invoice dated 17 January 2017, one invoice dated 29 November 2018 and the evidence I had identified at [17] of my error of law decision which I declined to set out or make findings on as the Respondent had not had the opportunity to make submissions about that evidence. As a result, time was spent during the hearing establishing what the evidence showed about the outstanding issues. That included the need for the Appellant to produce further documentary evidence during the hearing. However, I have been to establish what the evidence demonstrates about the

exercise of Treaty rights/ economic activity in the requisite period which I summarise as follows:

Ms [P]

- Tax year 2012-13 (encompassing start of the period): tax return for self-employment as Prime Cleaning Services: turnover £8310, net profit £7568 (handed in at hearing);
- Tax year 2013-14: tax return for self-employment providing cleaning services: turnover £8277, net profit £7618 (handed in at hearing);
- Employed by B-Tech Solutions from 2 June 2014 to 26 June 2015: employer's letters at [AB/19-20]; P60 for tax year to 5 April 2015 confirming earnings of £7371 [SAB/19]; P45 at [AB/22-24] confirming leaving date as 26 June 2015;
- Employed by Privilege Security & Services Ltd from 1 July 2015 to 15 November 2016: P60 for tax year to 5 April 2016 confirming earnings of £7514.14 (including previous employment) ([SAB/10]); P11 deductions working sheet confirming earnings from July 2015 ([SAB/11]), payslips February 2016 to September 2016 ([SAB/12-18]); P45 at [SAB/6-9] confirming leaving date;
- Employed by Innovative Management Solutions from November 2016 to April 2017: Payslips at [SAB/1-5] – there is no payslip for December 2016 but there are payslips either side of that month; it appears that this is simply an omission. The payslip for November 2016 suggests that Ms [P] worked for only part of that month, but she did not leave her previous employment until 15 November.

The Appellant

- Tax return 2013-14: income from employment and self-employment £10,343 ([SAB/65 – 83]);
- Tax return 2014-15: income from employment and self-employment £10,093([SAB/46-64]);
- Schedule of invoices for interpreting and translation services ([AB/31-35]): the invoices are in no particular order but show income from that source for the period 19 April 2013 to 20 July 2018 as follows:

  2013: £7701.06

  2014: £9987.12

  2015: £6659.92

  2016: £4572.72

  2017: £1393.09

  2018: £629.18

In particular, there are records of income in the period February to June 2017 of £179.14 (27 February) £199.43 (20 March), £125.75 (19 May);

- The additional documents for the period February to June 2017 are as follows:

  Remittance advice dated 12 July 2017 for an invoice dated 17 February 2017 (£455) ([AB/41]);

  Invoice dated 4 June 2017 for charges of £500.50 ([AB/42])

  E-mail dated 21 March 2017 notifying payment of £38 (AB/43])

  Payslips: 28 February 2017 (£34.66) ([AB/54]), 31 March 2017 (-£8.60: tax payment) ([AB/53]), 30 June 2017 (£43.26) ([AB/51])

  P60: year to 5 April 2017 (£43.26: corresponds to payslip of 30 June) ([AB/52]);

  Privilege Security & Services Ltd accounts for year to 31 March 2017 (Appellant is director): turnover £82,270, gross profit £6328, net loss £2386 ([AB70-85]);

  HMRC receipts for VAT payments for accounting periods ending March and June 2017 (£1173.06, £1002.08, £1200) ([AB/105-107]);

  Privilege Security & Services Ltd employee pay details 2017-18 and deductions working sheets for same period: ([AB/112-138])

10. Mr Kandola accepted that, on the face of the documents relied upon, Ms [P] was exercising Treaty rights up to the commencement of the divorce proceedings. He accepted that he was unable to challenge the genuineness of any earnings because the Respondent had failed to make enquiries of HMRC. The genuineness of earnings had been raised in a previous decision but not on this occasion as he accepted. He pointed out that the amounts earned are below the income tax thresholds.

11. Based on the above evidence, I am satisfied that the Appellant has shown that Ms [P] was exercising Treaty rights in the period from when the residence card was issued up to and including the date when divorce proceedings began and that he has himself been economically active during the period 28 February 2017 to 13 June 2017.

12. I accept that the earnings of Ms [P] are low and below the income tax thresholds. That does not however mean that they are not genuine earnings. For the period in question, based on Judge Oliver's finding, she was in a genuine marriage with the Appellant and accordingly they would be living on their joint incomes.

13. I appreciate that the amounts of actual payments made to the Appellant following the commencement of divorce proceedings as evidenced are small. However, he was self-employed as an interpreter/translator and therefore

amounts received do not necessarily coincide with the dates when services were provided. Moreover, he was in the same period a director of Privilege Security & Services Ltd which, although it made a trading loss in the year in question, had a fairly significant turnover. I am therefore satisfied that he was economically active as if he were exercising Treaty rights in that period.

Conclusions

14. In light of the conclusions I have reached about what the evidence shows on the narrow issues which remain as to the Appellant's ability to meet the provisions of regulation 10 of the EEA Regulations and now regulation 15, I am satisfied that the Appellant is entitled to permanent residence as the former spouse of an EEA national exercising Treaty rights who has retained the right of residence following the dissolution of their marriage. It follows that this appeal is allowed.

DECISION

The Appellant is entitled to a permanent right of residence as the former family member of an EEA national exercising Treaty rights who has retained his right of residence following the dissolution of their marriage.

The Appellant's appeal is for that reason allowed under the EEA Regulations.

Signed Dated: 14 March 2019
Upper Tribunal Judge Smith

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00590/2018

THE IMMIGRATION ACTS

Heard at Field House
On Monday 3 December 2018

Determination Promulgated
10 December 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

FAISAL ABBAS

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr J Gajjar, Counsel instructed by Z Ranjha, Addison & Khan solicitors

ERROR OF LAW DECISION AND DIRECTIONS

Background

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference, I refer below to the parties as they were in the First-tier Tribunal albeit that the Secretary of State for the Home Department is technically the Appellant in this particular appeal. The Respondent appeals against a decision of First-tier Tribunal Judge M R Oliver promulgated on 11 October 2018 ("the Decision") allowing the Appellant's appeal against the Respondent's decision dated 21 December 2017 refusing the Appellant's application for a residence card confirming his retained right of residence as the former spouse of a Lithuanian national, Ms [RP].

2. The Appellant came to the UK as a student on 27 September 2006. Following his marriage to Ms [P], he was granted a residence card valid from 13 June 2012 to 13 June 2017. His leave was revoked by the Respondent on 16 November 2015 following a visit by immigration officials to his address on 9 April 2015 and other associated enquiries. The Respondent concluded that the marriage was one of convenience.

3. The Judge heard evidence from the Appellant and other witnesses (although not Ms [P] who has played no part in the proceedings). He found that the marriage was one of convenience. Based on that finding, and having considered Article 8 ECHR, the Judge allowed the appeal under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

4. The Respondent appealed on two grounds. The first is that the Judge erroneously failed to consider whether the Appellant meets the other provisions of the relevant regulation (regulation 10 of the EEA Regulations). The second is that the Judge failed to address the second point taken in the Respondent's refusal letter that the Appellant did not produce the original of Ms [P]'s identity document and had not demonstrated circumstances beyond his control for failing to do so. It is asserted that the Appellant therefore fails to meet regulation 21 of the EEA Regulations.

5. Permission was granted by First-tier Tribunal Judge Lever on 8 November 2018 in the following terms so far as relevant:

> "…
>
> [3] The judge had set out the evidence in detail and had then given somewhat brief findings on the issue of the sham marriage. Leaving aside the issue of adequacy of those matters there does appear to be some confusion in the concluding paragraphs with reference to the Immigration Rules and A8 neither of which were relevant in this case. There was no reference to the issue of retained rights and those matters that were pertinent to that matter. It is arguable that the judge misdirected himself in the concluding paragraphs of his decision.
>
> [4] There was an arguable error of law."

6. The matter comes before me to determine whether the Decision contains a material error of law and if I so find, to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

Submissions

7. Mr Lindsay relied on the Respondent's grounds and the Tribunal's decision in MK (duty to give reasons) Pakistan [2013] UKUT 00641. He said that there were no or inadequate reasons provided for finding that the Appellant meets regulation 10 of the EEA Regulations. Although he accepted that the only points taken by the Respondent in his decision letter and at the hearing relate to the genuineness of the marriage and why an original identity document could not be produced, he said that it was nonetheless incumbent on the Judge to consider whether the Appellant otherwise met the relevant regulation.

8. Mr Gajjar accepted that the Judge should not have taken into account Article 8 ECHR, this being an appeal only under the EEA Regulations. He submitted however that this was not a material error. In relation to the Respondent's grounds, he said that the Appellant was entitled to know the case he had to meet and since the Respondent had not taken issue with whether the other requirements were met, there was no need for the Judge to go on to consider the remainder of the regulation. There was no issue to determine.

9. He also submitted that any error in this regard was immaterial. He pointed to the date when divorce proceedings were commenced (28 February 2017). He took me to the application form and to the evidence that Ms [P] was exercising Treaty rights at all relevant dates. He referred to the covering letter to the application which enclosed six pay slips. Mr Gajjar accepted that these were not before the First-tier Tribunal Judge, but he passed up what he said were those pay slips. Those show that Ms [P] was working for Innovative Management Solutions Ltd from November 2016 to end March 2017 (at least) which covered the relevant period.

10. As to the Respondent's second ground, Mr Gajjar directed my attention to the Tribunal's decision in Barnett (EEA Regulations: Rights and Documentation) [2012] UKUT 00142 (IAC) which in broad summary concludes that the Respondent cannot take issue with a non-EEA applicant's failure to produce his sponsoring EEA national's original identity document, particularly where, as here, that document has been before the Respondent in relation to an earlier application.

11. Mr Lindsay accepted that the case of Barnett may present difficulties in relation to the Respondent's second ground. Although he did not have the file relating to the earlier application and could not therefore check whether the original identity document was produced, he accepted that this was likely to be so given that the Respondent had issued the residence card in response to that

application. He continued to rely on his first ground, however. He pointed out that, if the pay slips were not before the First-tier Tribunal Judge at the earlier hearing, then if the Judge had gone on to consider the other provisions of regulation 10 of the EEA Regulations as is the Respondent's case, the Judge could not have concluded that the Appellant satisfied the requirement to show that Ms [P] was working at that time. Although he accepted that I could look at this evidence, he submitted that I could only find that an error was not material if another Judge could not conclude differently on the evidence. He pointed out that, since the Respondent has concerns about the Appellant's credibility, the Respondent may wish to verify the authenticity of the pay slips (including to check whether those were indeed the ones which were with the application made to the Respondent).

12. Mr Lindsay said that this is a case which should be remitted to the First-tier Tribunal for further findings in the event that I accept there is a material error of law. Mr Gajjar was content to leave that matter to me. In the event, I reserved my decision and indicated that, if I were minded to retain the appeal in this Tribunal, I would give directions to allow both parties the opportunity to consider the evidence and file further evidence if necessary.

Decision and Reasons

13. As I have already observed, this is an appeal under the EEA Regulations. Paragraph 1 of Schedule 2 to the EEA Regulations provides that the right of appeal against "an EEA decision" is to be treated as if it were one under section 82(1) Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and as if the sole permitted ground under section 84 of the 2002 Act were "that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom." As I pointed out to Mr Gajjar in submissions, the burden of showing that he meets the provisions of the EEA Regulations is on the Appellant and it is difficult to see how a Judge can find that an appellant's rights under EU law are breached unless he has considered the question whether they are met. Given the focus of the Respondent's decision letter on the genuineness of the relationship, it is unsurprising that the Respondent did not go on to consider the remaining provisions of regulation 10.

14. The Judge's conclusions are at [15] to [17] of the Decision as follows:

> "[15] The onus is on the appellant in immigration appeals to prove his or her case on the balance of probabilities, subject to the legal principle that "he who asserts must prove" which applies where the respondent asserts deception.
>
> [16] When the human rights of an appellant fall to be considered under the system, whereby the claim is first considered under appendix FM in respect of family life and paragraph 276ADE of the rules in respect of

> private life and only where the appellant does not meet the relevant requirements is consideration given to whether there are strong or compelling circumstances which outweigh the public interest in maintaining firm but fair immigration under the ***Razgar*** tests, has been approved by the higher courts (***R (Agyarko) v SSHD [2017] UKSC 11, MM (Lebanon) v SSHD [2017] UKSC 10 & Britcits v SSHD [2017] EWCA Civ 368).***
>
> [17] It was submitted for the respondent that there was no reason not to accept the record [of] the visit, but it has been disputed by the oral evidence of the appellant and his witness. Their evidence was tested in cross-examination and they gave explanations which contained criticisms of the officer's report. The record, so far as it was quoted in the part of the refusal letter that within the appellant's bundle, contained no mention of the properties [sic] second floor, which was confirmed in the house survey report. The refusal of the appellant's application was based firmly on a finding that [his] marriage to his ex-wife had been a sham and it was, therefore, for the respondent to establish that fact (***Papajorgji [EEA spouse – marriage of convenience) Greece [2012] UKUT 38).*** The respondent has failed to do so. In these circumstances I find that the appeal succeeds."

15. The Judge's reference to Article 8 ECHR, whilst otiose, does not amount to a material error of law. He did not allow the appeal on that basis. No doubt for that reason the Respondent did not challenge that paragraph of the Decision. Nor is there any challenge to the Judge's finding, based on the evidence, that the Appellant's marriage is not a sham. However, the Judge should have gone on following that finding to consider whether the provisions of regulation 10 of the EEA Regulations were met, in order to allow him to conclude that the Respondent's decision breached the Appellant's rights under EU law (for the reasons set out at [13] above). That is particularly so since, as the Judge correctly directed himself, at [15] of the Decision, the burden lies on the Appellant to establish that he does meet those provisions. Absent an express concession by the Respondent that he meets those provisions, the Appellant is required to demonstrate that he does. This is not a case of the Appellant needing to know the case which he has to meet as Mr Gajjar submitted, but rather the onus on the Appellant to meet his own burden of proof. For those reasons, I am satisfied that the Judge did make an error of law in his conclusions by failing to consider the remaining provisions of regulation 10.

16. I turn to consider the materiality of that error. Regulation 10(5) of the EEA Regulations provides as follows:

> "**Family member who has retained the right of residence**
>
> **10.** - (1) In these Regulations, "family member who has retained the right of residence" means, subject to paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).
>
> …
>
> (5) The condition in this paragraph is that the person ("A")—

> (a) 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;
>
> …
>
> (8) A person ("P") does not satisfy a condition in paragraph (2), (3), (4) or (5) if, at the first time P would otherwise have satisfied the relevant condition, P had a right of permanent residence under regulation 15.
>
> (9) A family member who has retained the right of residence ceases to enjoy that status on acquiring a right of permanent residence under regulation 15."

17. In light of the unchallenged finding about the genuineness of the relationship and the respective dates of the marriage and commencement of divorce proceedings, it is difficult to see how a Judge could decide other than in the Appellant's favour in relation to regulation 10(5)(a) and (d) of the EEA Regulations. The more difficult question is whether Ms [P] was exercising Treaty rights at the relevant date (when the divorce proceedings were begun) and whether the Appellant meets regulation 10(6). In relation to the latter, there is substantial documentation relating to the Appellant's own earnings covering the period from 16 May 2013 to 20 July 2018. Given the lack of findings made in relation to the level of those earnings and any gaps in the period by the First-tier Tribunal Judge, and that I did not receive submissions about this evidence, I do not propose to make any findings about what that evidence shows at this stage.

18. As I pointed out to Mr Gajjar, the more difficult question is Ms [P]'s exercise of Treaty rights. There is much less evidence in that regard covering, at best, the

period from 2 June 2014 to 29 December 2016. However, as I have already noted at [9] above, I was shown pay slips which it is said are the six pay slips referred to in the covering letter to the application made to the Respondent. Leaving aside that the copies I was given are of only four pay slips in number, I have no way of knowing if that is right. It also cannot be said that the error of law made by the Judge is immaterial because if the Judge had gone on to consider the appeal on the evidence which was before him as I have concluded he should, this would not have included evidence that Ms [P] was exercising Treaty rights in the UK as at 28 February 2017 when divorce proceedings were begun.

19. For that reason, I conclude that the error of law in relation to ground one is material and I set aside the Decision for that reason. I do not need to go on to consider whether there is an error of law disclosed by ground two. I can well see why the Appellant may find it difficult to produce the original of his ex-wife's identity document following the termination of their marriage (unless the breakdown is particularly amicable). For all I know, she may no longer be in the UK. That may well be a very good reason why he is unable to produce it even if there is a requirement that he do so. It will be for the Respondent to consider whether to maintain the refusal for that reason and to explain, in particular, why the production of the identity document at the time the earlier application was made (if it was produced) is insufficient to establish her identity and nationality.

20. As I have already observed, there has been no challenge to the Decision concluding that the Appellant's marriage was not a sham. I preserve the finding made to that effect at [17] of the Decision.

21. I have carefully considered whether it is appropriate to remit this appeal to the First-tier Tribunal for re-making of the decision. I have concluded that this is not necessary in this case. The issues which remain in relation to whether regulation 10 is met as identified at [17] and [18] above are likely to turn on documentary evidence. That evidence can be examined by a further hearing in this Tribunal following, if necessary, the filing of any further evidence on those issues and submissions by the parties as to that evidence. It will be open to the Respondent to check the additional documents handed up at the hearing together with those produced with the application and any additional evidence which the Appellant files and serves in response to the directions.

22. For the foregoing reasons, I am satisfied that the Decision discloses a material error of law and I set aside the Decision. I preserve [17] of the Decision with the exception of the final sentence of that paragraph. I have given directions below for the filing and service of further evidence and written submissions prior to the next hearing.

DECISION

I am satisfied that the Decision contains a material error of law. I set aside the decision of First-tier Tribunal Judge M R Oliver promulgated on 11 October 2018. I make the following directions for the re-making of the decision:

DIRECTIONS

1. **Within four weeks from the date when this decision is promulgated, the parties shall file with the Tribunal and serve on the other party any further evidence on which they rely. In particular, the Tribunal would be assisted by a copy of all documents which accompanied the Appellant's application made on 1 June 2017 and, if the Respondent continues to rely on the absence of the original identity document of Ms [P], a copy of the application which led to the issue of the residence card valid from 13 June 2012 to 13 June 2017 or other evidence showing whether her original identity document was sent to the Respondent on that occasion.**

2. **Within six weeks from the date when this decision is promulgated, the parties shall file with the Tribunal and serve on the other party written submissions outlining the issues which they consider remain for determination and referring to any case law on which they rely (and producing those case law authorities).**

3. **The appeal will be relisted for a hearing to re-make the decision on the first available date after eight weeks from when this decision is promulgated. Time estimate ½ day.**

Signed Dated: 6 December 2018
Upper Tribunal Judge Smith