



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

Appeal Number: EA/01244/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2018**

**Decision & Reasons
Promulgated
On 2 January 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AYOBAMI MUYIWA ADEWUNMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, instructed by Queen's Park Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Ayobami Muyiwa Adewunmi, was born on 11 November 1980 and is a male citizen of Nigeria. He appeals against the decision of the respondent dated 15 November 2016 which refused his application for a residence card on the basis that he was a family member who had

retained right of residence on divorce. The First-tier Tribunal (in a decision promulgated on 24 April 2018) dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Mr Jafar, who appeared for the appellant before the Upper Tribunal, explained that the judge had made a number of errors with his calculation of the figures shown on the appellant's wife's pay slips and which the judge discusses at [17]. Likewise, the judge appears to have become confused regarding the address of the appellant and his former wife [19-21] and failed to deliver a fair hearing to the appellant by raising during the course of the hearing for the first time issues concerning the pay slip evidence and also the address. The judge's concerns regarding the pay slips and the address led him to conclude that the appellant was not "a reliable witness or given both his unreliability and the features noted in the pay slips that the documents he has produced can be accepted as genuine pay slips for Ms Ka [the appellant's former wife] or reliable evidence of her continued exercise of treaty rights" [22]. Mr Jafar submitted that the judge should have adjourned the hearing to enable the appellant to address the concerns of the Tribunal.
3. The other ground of appeal concerns the judgment of the Court of Appeal in *Baigazieva* [2018] EWCA Civ 1088. The First-tier Tribunal [14] had wrongly concluded that the appellant had to show that his EEA sponsor was a qualified person at the date of divorce; following *Baigazieva* it was necessary to show that a former spouse had been a qualified person to the point of the initiation of divorce proceedings rather than their conclusion.
4. The difficulty for the appellant is that the grant of permission in this instance has been limited. Granting permission on 18 September 2018, Judge Andrew wrote [3]:

"I am satisfied that there is an arguable error of law in the decision in that the judge considered whether or not the appellant's former partner was employed as at the date of divorce rather than at the date of initiation of the divorce proceedings. However I do not find the judge's refusal to adjourn and make an AMOS direction is an arguable error of law. This should have been considered prior to the judge being asked to make findings in relation to the wage slips and should have been an obvious point to the appellant's representatives."
5. I am satisfied that the correct covering letter has been sent out to the appellant by the Upper Tribunal with this (partial) grant of permission. That covering letter is in the form IA68 and reads as follows:

'You may apply to the Upper Tribunal for permission to appeal on a point of law arising from the First-tier Tribunal's decision on any ground on which permission has been refused.'
6. Mr Jafar submitted that it was not surprising that the solicitors had overlooked the fact that there was a partial grant of permission in this instance and that the Tribunal should, in any event, proceed to deal with all grounds of appeal as pleaded. I disagree. The covering letter IA68

made it entirely clear to the appellant's representatives that it was open to the appellant to renew his application for permission directly to the Upper Tribunal in respect of the ground of appeal on which permission had been refused. The appellant chose not to do that and is now out of time. Further, Judge Andrew's grant is unequivocal; any reading of it should have prompting consideration of the need to renew the application for permission to the Upper Tribunal. I am well aware that permission is often granted even in respect of grounds of appeal which may stand little chance of succeeding but it was wrong for the appellant's representative simply to assume that that because they had been notified of the right to renew the application by the Upper Tribunal, they would be able to pursue at the Upper Tribunal initial hearing grounds on which the appellant had been refused permission. I find that the "Amos direction" ground is not before me because Judge Andrew has unequivocally refused permission on that ground and the application has not been renewed.

7. As regards the remaining ground for which permission has been granted, the appellant is in some difficulty. As Mr Avery submitted, the judge has made a comprehensive finding that the appellant's evidence both oral and documentary is unreliable. In the light of that finding, it does not matter whether one takes the point of initiation of the divorce proceedings or the decree absolute at the relevant time at which the appellant needed to show that his former wife was exercising treaty rights; the comprehensive finding that the appellant's evidence was not credible must defeat the appeal. I acknowledge that this does beg the question as to why Judge Andrew granted permission given that her refusal of permission on the remaining ground effectively rendered this appeal a dead letter from the outset. However, in the circumstances, the appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.
9. No anonymity direction is made.

Signed

Date 1 December 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 December 2018

Upper Tribunal Judge Lane