



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03766/2016

THE IMMIGRATION ACTS

Heard at UT (IAC) Hearing in Field House
On 6 March 2019

Decision & Reasons Promulgated
On 25 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MARTIN EZEUGO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Shah, Legal Representative, JKR Solicitors

For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 29 August 2018 I set aside the decision of the First-tier Tribunal. I now remake that decision.
2. The appellant is a citizen of Nigeria, born on 14 May 1970, who divorced his EEA national wife in May 2015.
3. On 12 October 2015 the appellant applied for a residence card as confirmation of a retained right of residence following a divorce under the Immigration (EEA)

Regulations 2006 (“the 2006 Regulations”). His application was refused on 17 March 2016 because he was unable to show, as required under Regulation 10(5)(a) of the 2006 Regulations, that his former wife was exercising Treaty Rights when the marriage terminated.

4. The appellant has not produced any independent evidence to show that his former wife was exercising Treaty Rights when they divorced in 2015. The only documents he submitted are a payslip dated 26 February 2010 and a letter from an employer dated 20 April 2010. The documents are clearly irrelevant as they are from five years before the divorce. The employment status of the appellant’s wife in 2010 cannot conceivably tell me anything about whether she was exercising Treaty Rights in 2015.
5. In my decision of 29 August 2018 I directed the respondent to obtain from HMRC documents showing the tax paid and national insurance contributions made, if any, by the appellant’s former wife. HMRC duly undertook the enquiries at the request of the respondent.
6. The evidence from HMRC is set out in two witness statements by an HMRC employee named Mr Lewis. He stated that HMRC were unable to locate any evidence of the appellant’s ex-wife’s employment in the UK. The second of his two statements states that the National Insurance number given on the payslip dated 26 February 2010 does not match that of the appellant’s ex-wife and in fact relates to a male living in the Midlands area.
7. Mr Shah argued that I should not draw any negative inference from the statements of Mr Lewis as there could have been an error by the appellant’s ex-wife or her accountant in respect of the 2010 payslip and the search carried out by HMRC may have been inadequate because the last known address of the appellant’s former wife was not used. He also sought to rely on the fact that a resident’s permit for the appellant was issued in October 2010.
8. Despite HMRC having undertaken enquiries, the appellant has been unable to provide any independent or documentary evidence to show that his former wife was exercising Treaty Rights when they divorced in 2015. The only documents before me are from 2010 (five years before the relevant date) and are therefore irrelevant. The appellant has not established that the requirements of Regulation 10(5) of the 2006 Regulations are satisfied. His appeal is therefore dismissed.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 21 March 2019