Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05138/2017

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 25 April 2019	**On 29th May 2019**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

ARTI HAXHIAJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Puar, instructed by Solacexis Solicitors.
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. We have given the details of representation in this appeal in the usual way, and indeed that is the way it appeared to us at the hearing. Following the hearing, however, we received a letter dated 17 April 2019 indicating that Solacexis Solicitors were no longer instructed to represent the appellant. Mr Puar was evidently not aware of that letter either. We record here that he did everything that anybody acting for the appellant might have been expected to do in this case.

2. The appellant is a national of Albania who appealed to the First-tier Tribunal against the decision of the respondent refusing him permanent residence in the United Kingdom. The appellant's case was based on his marriage to a Greek national. He asserted that they had married in 2005 in Greece, and moved to the United Kingdom in February 2006. He was granted five years residence as a family member of an EEA National. He and his wife were divorced in 2012. The appellant, however, claimed that he continued to reside in the United Kingdom under the Immigration (EEA) Regulations 2016 and had, by the time of his application, completed 10 years residence.

3. Judge Boyes dismissed the appellant's appeal. He had before him HMRC records which tended to show that the appellant's wife was not employed for the relevant period of time in the United Kingdom. As Judge Boyes said, "I prefer the documentary evidence provided by HMRC as opposed to the appellant's purported recollection. It is by far the more reliable.".

4. Judge Boyes' decision concluded as follows:

> "20. The appeal thus fails. There was no Article 8 ECHR claim other than the matter raised as per above [the challenge to the refusal of the residence permit]. In any event, there was nothing compelling outside the rules.
>
> Notice of Decision
>
> 21. It follows from the above that:
>
> A. the appeal against the refusal of a Residence card is dismissed and the appeal fails."

5. Permission to appeal was granted on grounds asserting that the judge had not been entitled to reach the view he did on the facts relating to the appellant's wife's employment, and that he had confused the need for the marriage to last three years with the need to demonstrate that she worked for the relevant period of five years. It was also argued that the judge had erred in dismissing a Human Rights appeal, rather than confining himself to the EEA appeal before him.

6. As we have said, Mr Puar did all that could be done on the appellant's behalf. The grounds relating to the substantive decision are wholly without merit. The appellant needed to show his wife's employment for the relevant five years, up to the date of the termination of the marriage. The HMRC evidence was, for a good deal of that period, quite specific: it showed that the appellant's wife had been registered as working in the United Kingdom in 2009/10, 2010/11, and 2011/12, but that there was no trace of any taxable employment after 12 June 2011. Mr Puar pointed out that as there were "no records held" for the years before 2009/10, it followed that HMRC records could not be complete. We do not think that that exactly follows, but, in any event, the judge was amply entitled to find that the appellant had not shown that his wife was working after 12 June 2011, and therefore not for the relevant five-year period. In addition, inspection at the hearing before us of documents that were also before the

First-tier Tribunal appeared to show that the appellant's wife had already left the United Kingdom when she began proceedings for divorce in Greece in July 2012 (the document was executed by her in person, but by the appellant only through a notary-proxy) and was by the date of the divorce proceedings in October and November 2012 described as "resident in Pyrgos".

7. It might be possible to show, from one phrase in the determination, that the judge was looking for three years work rather than five: but that would be a mistake wholly in the appellant's favour. If the position is that the judge was not satisfied on the evidence that the appellant's wife had been working for three years, it necessarily follows that she had not been working for five years. So far as concerns the refusal of a residence card, we dismiss this appeal.

8. There remains the question of the allegation that the judge determined a human rights appeal. It is clear that there was no human rights appeal before him, and he had no jurisdiction to determine one. We cannot see that the words of reference to a human rights claim, and the notice of decision, which we have set out, could give anybody any reason to suppose that the judge's decision encompasses a human rights appeal. For the avoidance of doubt, however, we are content to indicate that the determination under appeal does not reach, and could not reach any view on the merits of a claim other than under the EEA Regulations.

9. For the reasons we have given, Judge Boyes' decision, dismissing this appeal, stands.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 21 May 2019