Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/05159/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 April 2019	**On 8 May 2019**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR FARHAN ASLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, instructed by Vision Solicitors Ltd
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal promulgated on 14 November 2018. The appellant in this case is a citizen of Pakistan who was formerly married to a French national Ms Gomes. That was a marriage conducted by proxy and was dissolved in 2017. There is a long history to this case which is set out in the decision of the First-tier Tribunal and also in the prior decision of Deputy Upper Tribunal Judge O'Ryan. It is not in dispute and there is no need to set it out in this decision.

2. The appellant's case at its core is that he is entitled to a residence card as confirmation of his right of residence as a family member who has retained the right of residence pursuant to the Immigration (European

Economic Area) Regulations 2016. In this case the judge was satisfied that the requirements of Regulation 10(5) were met in that she was satisfied that there was a valid marriage; that it had lasted for the requisite time (3 years); and they had lived in the United Kingdom for the requisite time (1 year). She was satisfied also that the appellant's former spouse had been exercising treaty rights. Those findings were not the subject of any challenge.

3. What is challenged here is the judge's approach to Regulation 10(6) that is whether the applicant would, other than the fact that he is not a citizen of the EEA, be a "worker" as defined in the EEA Regulations. In effect, that question is: was he working at the date of the dissolution of the marriage?

4. The judge noted at paragraph [24] that Judge O'Ryan has directed that the appellant must provide evidence to show that he was economically active to show that he met Regulation 10(6). The judge found that he had not been working at the date of which divorce proceedings were initiated in May 2016 or at the date that the Decree Absolute was issued on 15 November 2016. The judge stated, "there is no evidence before me to show the appellant was working as at the date the divorce was initiated or when the Decree Absolute was made and indeed the appellant gave evidence that he had not had permission to work at this time." The judge then went on to dismiss the application.

5. Permission to appeal was sought on two grounds: first, that the judge had erred in requiring the appellant to show that he was working as at the date that divorce proceedings were initiated; and, second, that the requirement to be exercised in treaty rights is relevant only in order to obtain permanent residence this being the proper meaning of Article 13 of Directive 2004/38 (the "Citizenship Directive").

6. There was extensive argument before me that I should admit at the error of law stage further evidence to the effect that the appellant had in fact been working as at that date. I do not however need to look at that because in my view the judge erred when she said that there was no evidence of working. That is not correct. It appears to have been overlooked that in the application form which the appellant had signed (and which appends a statement of truth) that he was working for Ratna & Co. I am just persuaded that the judge erred in stating that there was no evidence, and accordingly the decision ought to be set aside and remade.

7. I do however wish to record my concern that the documents which are now produced could and should have been made available and it is difficult to see how given the ease with which the appellant was able within ten days to obtain these documents from HM Revenue & Customs that this would satisfy the test in **Ladd & Marshall** as there appears not to have been due diligence on the part of his solicitors or him. It is somewhat unusual to seek to obtain documents by writing to the Home Office to get copies of documents sent to them rather than to get a copy from the person that issued them in the first place.

8. In the circumstances having found that there was an error in law in relation to ground 1 is unnecessary for me to consider ground 2.

9. It now falls to me to remake the decision. I am satisfied on the basis of the evidence before me which includes the evidence obtained from HM Revenue & Customs and in the absence of submissions to the contrary that the appellant was in fact working both at the date in which the divorce proceedings were initiated and at the date on which the divorce became Absolute.

10. Accordingly, on that basis he is a person who retained the right of residence as he met the requirements of regulations 10 (6) of the EEA Regulations and so is entitled to a document confirming that.

11. It is unnecessary for me to make any findings regarding his current situation as the application was not one seeking confirmation that he was entitled to a permanent right of residence. That would require a fresh application supported by detailed extensive evidence regarding to his position of being involuntarily unemployed and by reference to recent case law from the European Court of Justice.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the decision by allowing the appeal under the Immigration (EEA) Regulations 2016

Signed Date: 2 May 2019

Upper Tribunal Judge Rintoul