



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/36531/2014

THE IMMIGRATION ACTS

Heard at Field House
On 16th September 2019

Decision & Reasons Promulgated
On 19th September 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

MISAN MEBIE EDUN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Edun, a citizen of Nigeria, applied, on 26th June 2014, for a residence card under regulation 10(5) Immigration (European Economic Area) Regulations 2006 on the basis of a retained right of residence following the ending of his marriage to Adjoa Amelie Soudanie. The respondent refused the application, treating it as an application for permanent residence.
2. His appeal against that decision was dismissed by First-tier Tribunal judge Woolf for reasons set out in a decision promulgated on 6th October 2017. Permission to appeal that decision was granted and, for reasons given orally on 25th October 2018 and recorded in a written decision promulgated on 20th November 2018, DUTJ Jordan found the First-tier Tribunal judge had erred in law such that his decision be set aside to be remade.
3. A copy of that decision is attached but in essence, DUTJ Jordan noted that it seemed that the First-tier Tribunal judge was uncertain as to the nature of the application being advanced; that there were gaps in the evidence of his wife's employment and that the judge had failed to make any findings as to whether the appellant had a retained right of residence rather than considering solely whether he had a right to permanent residence. DUTJ Jordan held that First-tier Tribunal

judge's conclusion that Mr Edun's wife had not been working for a continuous period of five years prior to the breakdown of the marriage was sustainable. Although, he found, that periods of some 2 months or so could be explained and not held to disrupt the five-year period, the longer periods where evidence was not available of employment relating to 31st October 2011 to 1st May 2012 and 29th October 2012 to 18 September 2013 were of such length as to disturb the continuity.

4. There then followed a number of directions made which resulted in the respondent disclosing the information they held as to his former wife's employment history and immigration status.
5. Mr Edun confirmed before me that he had separated from his wife in the early part of 2013 and divorce proceedings issued thereafter. The decree nisi was, as set out in the decree absolute, obtained on 24th February 2014 and decree absolute was pronounced on 12th May 2014.
6. The national insurance number provided for Ms Soudanie, was not an NI number registered in her name, but in another unrelated person's name. The search with HMRC in March 2017 against Ms Soudanie's temporary national insurance number showed that there were no National Insurance payments recorded against her name for the tax years 2011/2012 and 2012/2013 or 2014/2015. There was no record with the DWP that Ms Soudanie had been in receipt of benefits during any of these periods.
7. Although there was no doubt, but that the marriage had lasted the requisite period of time, what was plain was that Mr Edun could not produce evidence required either directly or following an order of the Upper tribunal to HMRC for disclosure of NI records, that his former wife had been employed at the requisite time.
8. It follows that Mr Edun does not meet the criteria under the 2006 regulations for a retained right of residence.
9. His appeal must therefore be dismissed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision was set aside by DUTJ Jordan.

I re-make the decision in the appeal by dismissing it.

Date 17th September 2019



Upper Tribunal Judge Coker