



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

Appeal Numbers: EA056062016
EA021812015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2017**

**Decision & Reasons
Promulgated
On 11 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**AOUAMI FAYCAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Paraskos, Counsel instructed by Kamberley Solicitors
For the Respondent: Ms Z Ahmed, Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Algeria born on 11 May 1987. On 1 July 2011 he married Palmira Euritse Coque, a Portuguese national born on 12 February 1986 said then to be exercising Treaty Rights in the United Kingdom. In September 2011 the Respondent issued a Residence Card to the Appellant valid for five years.

2. On 10 April 2015 the decree absolute of the marriage of the Appellant and Ms Coque was pronounced.
3. On 5 May 2015 the Appellant through solicitors not involved in either of these two appeals made an application for confirmation of the Appellant's retained right of residence following his divorce. On 19 October 2015 the Respondent refused the application in part on the basis the Appellant had not produced evidence to show his ex-wife was exercising Treaty Rights at the date of the decree absolute. I shall refer to this decision of the Respondent as the 2015 decision.
4. On 20 November 2015 by a different firm of solicitors the Appellant applied to the Respondent for a Permanent Residence Card which on 26 April 2016 the Respondent refused on the sole basis that the Appellant had failed to produce satisfactory evidence that his ex-wife was exercising Treaty Rights at the date of the decree absolute. I shall refer to this decision of the Respondent as the 2016 decision. The 2015 decision related to a retained right of Residence Card application and the 2016 decision related to a Permanent Residence Card application.
5. The Appellant through the same solicitors lodged notices of appeal on 3 November 2015 and 11 May 2016.
6. In August 2016 the Appellant instructed his present solicitors.
7. The First-tier Tribunal linked the appeals but for reasons which are not clear from the file a notice of hearing was issued in respect of only the appeal against the 2015 decision.
8. The matter came before Judge of the First-tier Tribunal Paul on 2 December 2016. Mr Paraskos was not instructed on that occasion. Ms Ahmad informed the Tribunal that the Respondent was represented by Counsel and that Counsel's minutes showed there was some confusion about which appeal was before Judge Paul.
9. By a decision promulgated on 13 December 2016 Judge Paul dismissed both appeals for the primary reason that he was not satisfied the Appellant had shown his ex-wife was exercising Treaty Rights at the date of the decree absolute.
10. On 26 June 2017 Judge of the First-tier Tribunal Robertson granted the Appellant permission to appeal on the ground that it was arguable the Judge had erred in failing to give adequate reasons for rejecting the Appellant's evidence why his ex-wife was not at court and the evidence provided by the Appellant from HM Revenue & Customs to show his wife had been in employment.
11. At the Upper Tribunal hearing both parties accepted they would make no issue about the procedural irregularities in the First-tier Tribunal in relation to the lack of notice of the hearing of the appeal against the 2016 decision. The parties agreed that in the light of what was said in the 2016

decision, it was clear the Respondent no longer challenged the length of subsistence of the Appellant's marriage. The sole issue was whether the Appellant's ex-wife had been exercising Treaty Rights at the date of the decree absolute. I referred the parties to pages 6 and 7 of the Appellant's bundle filed in the First-tier Tribunal on 25 November 2016. These clearly showed the Appellant's ex-wife had been in employment for the tax years ending 5 April 2013, 2015 and 2016.

12. The Judge had made no reference to this in his decision. I indicated that I saw no reason not to find in relation to the 2015 decision that the Judge had erred in law and that the appeal should be substantively allowed because there was evidence from HM Revenue & Customs to show that the Appellant's ex-wife was exercising Treaty Rights at the date of decree absolute.
13. There followed discussion about what to do with the appeal against the 2016 decision which had refused the Appellant a Permanent Residence Card.
14. It became evident the Appellant had not filed sufficient evidence to show he had been in employment for five years. I suggested to Mr Paraskos that he may wish to take instructions although he had said that he had been instructed only in respect of the 2015 decision. He did so.
15. When the hearing resumed Mr Paraskos confirmed the Appellant wished to withdraw his appeal against the 2016 decision. I was satisfied that in the light of the discussions which had taken place there were good reasons for the Appellant to withdraw his appeal.

Anonymity

There was no request for an anonymity direction and having heard the appeal I consider none is required.

NOTICE OF DECISION

The decision of the First-tier Tribunal in relation to both the 2015 and the 2016 decisions contained a material error of law and is set aside. The appeal against the 2015 decision under Tribunal reference EA/02181/2015 is allowed under the Immigration (EEA) Regulations 2006.

The appeal against the 2016 decision under Tribunal reference EA/05606/2016 is withdrawn.

Signed/Official Crest

Date 10. viii. 2017

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

I have allowed the appeal against the 2016 decision and so have considered whether to make a fee award. In all the circumstances, I do not consider it appropriate to make a fee award since the relevant evidence on which the appeal has been decided was not produced until 25 November 2016.

Signed/Official Crest

Date 10. viii. 2017

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal