



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: EA/04792/2016

THE IMMIGRATION ACTS

Heard At Field House
On 12.07.2018

Decision and Reasons Promulgated
On 06.09.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Nadezda [V]
(anonymity direction not made)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Nicholas O'Brien* (counsel instructed by Edmans & Co)

For the respondent: Mr C Howells

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Michael Hembrough), sitting at Hatton Cross on 4 October 2017, to dismiss an EEA appeal against refusal of a wife's residence card by a citizen of the Russian Federation, born 1954 (though it must be said she looks younger).

2. The appellant had come in as an entrepreneur in 2014, and on 27 March 2015 was married to a Hungarian citizen. On 21 September she was refused a card, on the ground that hers had been a marriage of convenience; but on 16 October she made a fresh application under reg. 10 of the Immigration (European Economic Area) Regulations 2006, on the basis that she had been a victim of domestic violence, and was entitled to a retained right of residence.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

3. On 6 April 2016 that application was refused: the appellant's marriage had not been brought to an end by divorce, so that no retained right arose. However, it was also considered under reg. 6, but refused on that too, as it was not accepted that the appellant's husband was a 'qualified person' exercising Treaty rights at the date of the decision. As the judge noted at paragraph 7, the Home Office had made their own inquiries with HM Revenue and Customs, and the result, dated 4 April, appears at annex I to the appeal bundle. So far this was a fully justifiable decision as it stood.
4. The appellant however, represented at the time by different solicitors, exercised her right of appeal, and on 10 May 2017 she and they were sent notice of hearing for 18 September. On 2 August her present solicitors wrote in, on the basis that they had changed address, rather than being a different firm, and on 5 September they and the appellant were sent notice of hearing for the 18th at the address they had given.
5. At the hearing the appellant was represented by counsel, not Mr O'Brien. Following some discussion of the marriage of convenience point, which remained in issue, counsel accepted that no retained right of residence could arise, and applied, for the first time, for what is called an *Amos* direction: the reference is to *Amos* [2011] EWCA Civ 552. This would have required the Home Office to make further inquiries with the Revenue to establish whether the appellant's husband was by now a 'qualified person' or not. If this had been a retained right case, then his status would have been fixed for appeal purposes as at the date of the decree absolute; but there had been no divorce, so it was accepted that the date of the hearing was the relevant moment.
6. The judge took the view (at 17) that there would inevitably be a gap between the date of the decision and the hearing, and there would be a further one before any adjourned date, the soonest available being in April 2018. In the judge's view, it would then have been open to the appellant to seek yet another adjournment, and so on; so he refused to grant one.
7. The judge's reasons are easy to understand; but the appellant was entitled, following *Amos*, to assistance from Her Majesty's Government in establishing her case under the EEA Regulations. On the other hand, she and her legal advisers needed to co-operate by requesting that at the earliest possible stage. In this case, that would have been as soon as she and her first solicitors received the first notice of hearing, sent 10 May 2017; and at latest when her present solicitors got theirs, sent on 5 September.
8. I asked Mr O'Brien why this had not been done: the best explanation he could give was that it had not been appreciated at any time before counsel was instructed for the first-tier hearing that this was not a retained right case. Mr O'Brien accepted that this represented a failing by the appellant's legal advisers, which ought not to have happened. Perhaps if counsel before the judge had conceded as much, then the judge might have been more sympathetic to his application.
9. Mr Howells for his part accepted that the relevant date in a reg. 6 case was the date of the hearing, and that the appellant was entitled, other things being equal, to an *Amos* direction. Both advocates agreed that, in the circumstances which had unfortunately arisen, there was

no alternative to setting aside the first-tier decision, with a view to a fresh hearing, and an application for an *Amos* direction well in advance of it.

10. The arrangements for that will be in the hands of the resident judge at Hatton Cross, and any judge acting as duty judge on his behalf; but it may help if I set out my general views on the point. If, as the judge in this case said, there will normally be a significant gap (by which I should mean more than three months) between the decision and the hearing in a reg. 6 case, then an *Amos* direction may reasonably be requested.
11. On the other hand, it is the clear duty of solicitors and other authorized representatives to consider carefully whether an *Amos* direction is needed, and, if so, to make an urgent application for it, within at latest 14 days of receiving notice of hearing. Given the regular time-lag between that and the date of the hearing, it should be possible for the Home Office to comply with the direction in time to avoid any adjournment; but, if one does become necessary, then representatives should not expect any further *Amos* inquiries to be made.
12. Counsel's draft *Amos* direction is attached to this decision; but it will be for those representing the appellant to make their application to the resident judge at Hatton Cross as soon as they receive notice of hearing there. If a timely application were made for an *Amos* direction, then I should expect it would normally be granted by the duty judge. On the other hand, if that were not done, then I should expect that the duty judge, and still more any hearing judge faced with such a request for the first time, would require some very exceptional reasons why a direction should be given.

Appeal allowed: first-tier decision set aside

Fresh hearing in First-tier Tribunal at Hatton Cross, not before Judge Hembrough

A handwritten signature in black ink, appearing to be 'JLH', written in a cursive style.

(a judge of the Upper Tribunal)

Dated 05.09.2018

IN THE FIRST TIER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
BETWEEN:

App.no. EA/04792/2016

NADEZDA [V]

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Draft/ORDER FOR DIRECTIONS

Pursuant to Procedure Rules 4(2) and 4(3)(d) the Respondent must send to the Tribunal and the Appellant no later than two weeks before the date on which this appeal will next be heard, the following information and evidence:

- (i) copies of a further letter or other document from Her Majesty's Revenue and Customs, updating the information regarding the Appellant's husband [IS] set out in HMRC's letter dated 4th April 2016 (Respondent's bundle document I);
- (ii) copies of all P60s and any P45s in respect of [IS], and of any self-assessment tax returns submitted by him;
- (iii) copies of any documents notifying [IS] or HMRC of the beginning or end of any period during which Mr [IS] was in receipt of any state benefits;
- (iv) copies of a statement on behalf of the Respondent confirming that the Respondent has checked his own records in respect of [IS] and setting out all applications made by him for a residence or permanent residence card, stating in each case the outcome and the date of application and decision;
- (v) copies of all evidence submitted by [IS] in support of any application identified in the statement required under paragraph (iv), insofar as it relates to his employment, self-employment, status as a jobseeker or other claimed "qualified person" status;

all such information and evidence to be up to date as at the date falling three weeks before the date on which the appeal will next be heard.