**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: EA/13724/2016**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On July 13, 2018** | **On 07 August 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR ASIM SALEEM**
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Not represented or present
For the Respondent: Miss Ahmad, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. No anonymity direction is made.

2. The appellant is a national of Pakistan. The appellant originally entered the United Kingdom as a student and on February 12, 2012 the appellant married an EEA national. On March 9, 2012 the appellant sought an A2 registration certificate as the non-EEA family member of an EEA national and this was issued to him on January 3, 2013 and was valid until January 3, 2018.

3. On May 17, 2016 the appellant submitted an application for a retained right to a residence card following his divorce from the EEA national. The respondent refused that application on November 15, 2016 on the basis the appellant had failed to demonstrate that he satisfied the requirements of Regulation 10(5) of the Immigration (EEA) Regulations 2006.

4. The appellant lodged grounds of appeal on November 29, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the 2006 Regulations.

5. His appeal came before Judge of the First-tier Tribunal Kaler (hereinafter called "the Judge") on March 19, 2018 and she dismissed the appellant's appeal under the EEA Regulations.

6. The appellant appealed this decision out of time on May 3, 2018. Judge of the First-tier Tribunal Shimmin extended time and granted permission to appeal on May 17, 2018 finding it arguable the Judge had erred by failing to give case management directions so that the appropriate evidence could be obtained via the respondent's resources.

7. A letter was received from the appellant's representatives inviting the Tribunal to deal with the appeal in both their absence and the absence of the appellant. On the basis of that letter I dealt with the matter having heard submissions from Miss Ahmad.

**SUBMISSIONS**

8. Miss Ahmad submitted that there was no merit to the grounds of appeal. The Judge had identified that the issue was whether the EEA national had been exercising treaty rights. She submitted that there was no documentary evidence after December 2014 that supported any suggestion that the EEA national was exercising treaty rights as required by Regulation 10(5) of the 2006 Regulations. There was no evidence that the appellant's representative had requested the respondent to obtain information about the EEA national and when the matter was raised at the hearing there was no evidence that any adjournment was sought for that information to be obtained and in any event the respondent's April 2017 guidance entitled "Free Movement Rights: direct family members of European Economic Area (EEA) national's" made clear the respondent would only be able to obtain information in incidents of domestic violence. As the appellant had failed to adduce evidence the EEA national was a qualifying person she correctly dismissed the appeal.

**FINDINGS**

9. The appellant had lodged an application and he completed sections 4 and 5 of the application form. In section 4 of the application he stated that he had previously been the family member of an EEA national and in section 5 he provided details about their marriage. In section 8 of the form he again referred to the fact that he was seeking a retention of his right of residence.

10. In dealing with this appeal the Judge refers to Regulations 10 and 15 of the 2006 Regulations and at paragraph 8 of the decision the Judge stated that the only issue was "whether the sponsor (EEA national) had been exercising treaty rights at the time of the divorce.

11. It is now common ground following the decision in Baigazieva and the Secretary of State for the Home Department [2018] EWCA 1088 (Civ) that the relevant date for when a former spouse claiming a retained right of residence needs to show their ex was a qualified person is the date of initiation of proceedings – not Decree Absolute. According to the application form the appellant and EEA national separated on November 4, 2015 (see section 8.17 of the application form) although in his statement he gave a different date in December 2015. For the purposes of this appeal the difference in date has no relevance.

12. The appellant would therefore have had to demonstrate that the EEA national was exercising treaty rights up to November 4, 2015/December 2015.

13. At paragraph 11 of the Judge's decision the Judge wrote that she was satisfied the appellant had been employed up to December 2014 and the issue was whether the appellant satisfied the Tribunal that the EEA national had continued to exercise her treaty rights. The decision refers to exercising treaty rights at the time of the divorce but as stated in Baigazieva the appellant would only have to demonstrate she was exercising treaty rights and thereby being a qualified person when divorce proceedings were initiated.

14. At the commencement of the proceedings the Judge asked the respondent's representative if any enquiry had been made with the Inland Revenue in relation to the EEA national's contributions for national insurance or income tax. The representative, after taking instructions, stated no such enquiry had been made and the Secretary of State was restricted to making enquiries only in cases involving domestic violence. There is no evidence in the court record that the appellant or his representative sought an adjournment and there is no evidence that the appellant or his representative had previously sought such information or invited the court to make an order directing the respondent to obtain such information.

15. The Judge refused the appeal on the basis there was "woefully little evidence of the sponsor (EEA national) working in the United Kingdom after December 2014.

16. Regulation 10(5) of the 2006 Regulations governs this appeal. The appellant had to demonstrate that he had ceased to be a "family member of a qualified person on the termination of the marriage." Taking that date to be November/December 2015 he had to demonstrate he met this Regulation.

17. Permission to appeal was given on the basis that the Judge should have given directions at the hearing, but the appellant was represented and there was no evidence that an adjournment was sought for this purpose. The grounds of appeal did not suggest the Judge had refused to adjourn the matter and in all circumstances, I find there has been no unfairness to the appellant.

18. There is also a suggestion in the permission that the Judge may have erred by failing to identify the relevant requirements for the right of residence but for the reasons set out above I find no merit in this ground. There was only one issue that troubled the Judge and that was whether the EEA national was a qualified person. Having concluded she was not the appellant was not entitled to a retained right of residence.

19. As a side note the Judge's decision referred to Regulation 15 of the 2006 Regulations. This Regulation deals with permanent residence but I am satisfied this was an application for a retained right of residence only and there was no evidence to suggest that permanent residence was something the Judge was considering. In any event, the same problems existed.

**DECISION**

20. There is no error in law and I dismiss the appeal.

Signed Date 13/07/2018

Deputy Upper Tribunal Judge Alis