



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

Appeal Number: EA/13735/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2018**

**Decision & Reasons Promulgated
On 26 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**JOSEPH KONE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khosla, D J Webb & Co

For the Respondent: Mr C Avery, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 19 May 2017 dismissing his appeal against the respondent's decision of 9 September 2016 refusing his application for permanent residence pursuant to reg. 10 (5) of the Immigration (European Economic Area) Regulations 2006.
2. The appellant is a citizen of Mali born on 12 December 1982. He entered the UK in August 2009 and on 5 January 2011 he applied for a residence card as the spouse of an EEA national exercising treaty rights. A residence

card was duly issued on 21 March 2011. The appellant married on 18 July 2009 but the marriage came to an end when he was granted a divorce decree absolute on 10 July 2015. On 14 March 2016 he applied for permanent residence. His application was refused as the respondent was not satisfied on the evidence produced that he was able to show that he had resided in accordance with the Regulations for a continuous five year period and that his former spouse had continuously exercised free movement rights up to the point of divorce.

3. The appellant appealed against this decision. He elected to have his appeal decided without a hearing on the basis of the documentary evidence. He submitted in support of his appeal a bundle of documentary evidence including a P45, a P60, a number of pay slips from Brakena Ltd for the months of April - August 2015 and a letter from Brakena Ltd dated 24 November 2016 to confirm his wife's employment with them.
4. In his decision the judge referred to this letter and said that it was stated that the appellant's former wife was employed by them from December 2015 to September 2016 whereas the pay slips were dated April-August 2015, not within the period stated in the letter. He said that when he considered the information provided by the respondent and the inconsistency between the letter and the wage slips he was not satisfied that the appellant's ex-wife was employed as claimed and he dismissed the appeal.
5. Permission to appeal was granted on the basis that it was arguable that the judge had misread the letter from Brakena Ltd and that his erroneous reading formed the basis of an incorrect refusal.
6. At the hearing before me Mr Avery accepted that the judge had misread that letter, which in fact stated that the appellant's former wife had been employed from 15 December 2014, her employment ceasing on 14 September 2015. It followed that there was no inconsistency between the wage slips submitted and a letter from the employer.
7. I am satisfied in these circumstances the judge erred in law by proceeding on a misapprehension of the evidence before him so taking an inaccurate and irrelevant matter into account when making his findings of fact.
8. Both representatives accepted that in these circumstances the proper course was for the appeal to be remitted to the First-tier Tribunal for a full rehearing. By letter dated 20 February 2018 the appellant applied for permission to amend his grounds of appeal but there was no need for me to consider that application in the light of the concession that the judge had erred in law. The hearing before the First-tier Tribunal will be a full rehearing and it will be open to both the appellant and the respondent to raise any matters relevant to the issues in the appeal.

Decision

9. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal sitting at Hatton cross for reconsideration by a different judge by way of a full rehearing.

Signed: H J E Latter
2018

Dated: 22 February

Deputy Upper Tribunal Judge Latter