



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

Appeal Number: IA/02811/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 October 2014**

**Decision & Reasons
Promulgated
On 23 October 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

COFFIE OSEI

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr M Harris, Counsel instructed by Harperbell Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against the decision of the respondent to refuse him a residence card in accordance with the Immigration (European Economic Area) Regulations 2006.
2. The First-tier Tribunal allowed the appeal without further qualification and I am quite satisfied that that was an erroneous decision. I say that because the claim was based upon a customary marriage between the appellant and a citizen of Germany exercising treaty rights in the United Kingdom but there was no evidence before the Tribunal to show that the laws of Germany recognise customary marriages of the kind that was said to have taken place here. That is a fundamental omission as was explained in the decision of **Kareem (Proxy marriages - EU law) [2014] UKUT 0024 (IAC)**. I am therefore satisfied that the First-tier Tribunal should not allow the appeal outright and I set aside the decision.

3. However, I have to ask myself if the First-tier Tribunal was satisfied that there was a durable relationship between the appellant and his alleged spouse. At paragraph 1 of the determination the judge says of the appellant and partner:

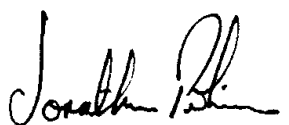
“they claimed to have been living together since 2010”.

At the very end of the determination in paragraph 17, after acknowledging that the Secretary of State did not believe the claimant and his purported partner, said:

“I form a very different view, having not only considered the answers in detail but also seen the witnesses as they gave their evidence. I formed the view that I was listening to honest witnesses.”

4. It is clear to me that the found that the claimant and partner were living in a durable relationship.
5. As Mr Tufan reminded me that I have no power to allow the appeal outright. Matters like this are within a discretion that has to be exercised by the Secretary of State. What I should do is what the First-tier Tribunal Judge should have done which is to allow the appeal to the extent that the decision is not in accordance with the law. The Secretary of State must apply the facts heard by the Tribunal to her policies and the law as she understands it and exercise her discretion accordingly.
6. Mr Tufan endeavoured to make a separate point which was that the reasons supporting the finding that the claimant was part of a durable relationship were just inadequate. It is often very difficult to say with any confidence that reasons are inadequate as a matter of law and Mr Tufan's efforts were frustrated by the point not really being taken in the grounds. The best he could do was to rely on ground 6 which says “no evidence of a durable relationship had been provided”. That was just wrong. There was evidence of a durable relationship. It was the oral evidence of the witnesses who the judge believed.
7. I realise from the Reasons for Refusal Letter if I did not know anyway that the Secretary of State would much have preferred to have received documentary evidence showing that the couple had lived together. If such evidence was available then the appellant and his partner should not have been reluctant to produce it but as a matter of law it is not necessary. Although Mr Tufan says that the Reasons for Refusal Letter made it plain that there were many inconsistencies I am not satisfied that is a justified observation. Certainly there were differences in the accounts but there were also marked similarities in the accounts and I am certainly not prepared to move from the very veiled criticism in ground 6 to permit an argument that the positive credibility findings were perverse or otherwise wrong in law when that is not clearly the case.
8. My decision is that the appeal is allowed to the limited extent that the appeal should not have been allowed under the Regulations but should have been remitted to the Secretary of State to exercise her discretion and that is the order that I make.

Signed
Jonathan Perkins



Judge of the Upper Tribunal

Dated 21 October 2014