



IAC-PE-SW-V1

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

Appeal Number: IA/09517/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 23rd October 2014**

**Decision & Reasons Promulgated
On 10th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR NAZMI BRAHIMAJ
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adams of Counsel

For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 14th March 1980 is a citizen of Albania. The Appellant who was present was represented by Mr Adams of Counsel. The Respondent was represented by Miss Johnstone, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for a residence card as a person in a durable relationship with a qualified EEA national. That application was refused by the Respondent on 4th February 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Holmes on 9th May 2014. The judge dismissed the Appellant's appeal.
3. Permission to appeal had been granted and the matter came before me in the Upper Tribunal to firstly decide whether an error of law had been made in the case or not. I heard that matter at Manchester on 15th August 2014 and for reasons provided in a written determination concluded a material error of law had been made by the judge, set aside the decision and issued directions for the remaking of that decision. The matter comes back before me in accordance with those directions.

The Proceedings - Introduction

4. As the Appellant was present I firstly explained to him the nature of the proceedings and the way they would be conducted.
5. I next checked the documents available to me in this case.
6. The Respondent's documents consist of:
 - Immigration history.
 - Those documents listed at folios A to C on the index sheet.
 - Refusal letter.
 - Notice and Grounds of Appeal.
7. The Appellant's documents consist of:
 - Those documents listed at folios 1A to 97 on the index sheet to the bundle.
 - Original marriage certificate.
8. As a preliminary issue it was noted that the parties had married on 1st July 2014 as evidenced by the marriage certificate. Application was made to amend the Grounds of Appeal so that this case could be considered under Regulation 12 of the 2006 Regulations the Appellant being a family member of the EEA national. There was no opposition to that amendment.

The Proceedings - Evidence

9. The Sponsor in this case, Miss Pirktina, provided her name and address and confirmed her witness statement in the Appellant's bundle as being true and correct. She confirmed that she had been working for some time firstly at Pretzza plc from March to August 2013, thereafter at Kakoo Fashions for two months and most

recently at Pizza Express based in London. She said that she expected a transfer to a Pizza Express in the Manchester area in the very near future. She was working full-time.

10. In cross-examination she confirmed her employment history and confirmed she was not claiming any benefits. She paid rent for the accommodation from her wages. She said other than wages she received tips but had no other source of income. She outlined two visits that she had made outside of the UK for a week or ten days in the last two years. She said she had a current Latvian passport.
11. At the conclusion I said that I would allow the appeal but provide a decision with reasons.

Decision and Reasons

12. In this case the burden of proof lies on the Appellant and the standard of proof for both immigration and human rights issues is a balance of probabilities. The Appellant is within the country and I am therefore entitled to look at circumstances existing as at the date of the hearing.
13. The history of this case demonstrates that the parties have been together for a little time. At the hearing before the First-tier Tribunal Judge in May 2014 he accepted that they had been together in a relationship for a period of time that may have been as much as fourteen months. They continue living together in that relationship and given the passage of time they have now been together for a period of about twenty months or so. Further as acknowledged by the Presenting Officer circumstances have changed somewhat from the last hearing before the First-tier Tribunal in that the parties have now married and accordingly the Appellant's case can be considered under the terms of Regulation 12 of the 2006 Regulations separate from or additional to a consideration under Regulation 8(5) of those Regulations.
14. I am satisfied, and indeed there was no suggestion that the marriage was simply a somewhat cynical ploy on the part of the Appellant and the Sponsor but rather something that reflected their relationship which as indicated above has been in existence now for some period of time.
15. The Presenting Officer wished to confirm that the Sponsor was still exercising treaty rights in the UK although that was not a matter that had been raised or placed in dispute on any prior occasion. The evidence as presented by the Sponsor confirmed that she had consistently been in employment in the UK since arrival and although she was no longer in the same employment as at the first hearing, nevertheless I was satisfied from the evidence provided that she continues to be employed at present with Pizza Express and accordingly is still exercising treaty rights.

16. In all the circumstances therefore I am satisfied that the Appellant meets the requirements of being a family member of an EEA national within the terms of the 2006 Regulations.

Decision

17. I allow this appeal under the 2006 Regulations.
18. Anonymity not retained.

Fee Decision

19. A fee has been paid in this case but given my decision there should be a refund.

Signed

Date

Deputy Upper Tribunal Judge Lever

10th November 2014