IAC-FH-CK-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Numbers: IA/09840/2014
IA/09842/2014

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 27 October 2014** | **On 24 November 2014** |
| **Prepared 27 October 2014** | |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MRS DIANA SOARES (FIRST APPELLANT)**
**MR SHERYAR RAJA (SECOND APPELLANT)**
**(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**
For the Appellants: None
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The first Appellant, a national of Portugal, date of birth 6 November 1991, appealed against the Respondent's decision dated 13 October 2013 to refuse a registration certificate under Regulation 6 of the Immigration

(European Economic Area) Regulations 2006 on the basis that she had failed to provide evidence to show that she was a qualified person. The second Appellant, a national of Pakistan, date of birth 2 August 1981, appealed against the Respondent's decision dated 13 October 2013 to refuse an application for a residence card as a person in a durable relationship with an EEA national under Regulation 8(5) and (6) of the 2006 Regulations.

2. The basis of that refusal was that the second Appellant had failed to prove that he was in a durable relationship with the First Appellant, an EEA national, and in addition the EEA national had failed to provide evidence that she was a qualified person exercising treaty rights. In both decisions no removal directions were made and the Respondent indicated that a further decision on removal would be notified separately. First-tier Tribunal judge Clapham (the judge) dismissed their appeals on 14 July 2014.

3. Notices of appeal was made by Pride Solicitors of 161-163 Staines Road, Hounslow, London TW3 3JZ with contact reference 'M. Abdullah' on behalf of the Appellants. Permission to appeal the decision of the Judge was given by First-tier Tribunal Judge Colyer on 12 September 2014.

4. Standard directions were sent out dated 26 September 2014 together with the notice of hearing, , to each Appellant, at their last notified address, 107 Sutton Lane, Hounslow, TW3 4LE for a hearing at 10 o'clock at Field House on 27 October 2014. A separate notice of hearing was sent to Pride Solicitors, their representatives. I was satisfied notices of the hearing were properly served upon the addresses provided by the Appellants and their representatives under the Tribunal Procedure (Upper Tribunal) Rules 2008 Rule 13.

5. Neither of the Appellants nor Pride Solicitors attended the hearing and no representations were made seeking an adjournment or any earlier postponement of the hearing. Given the lack of explanation for absence

and/or the lack of any written representations and a month has passed since notice of hearing was given by first-class post and not returned I found, having regard to the overriding objective that the fair, just and timeous course, this matter should proceed in their absence. In considering this appeal. There was nothing to indicate any adjournment would secure attendance by the Appellant or her representatives. I have taken into account the original grounds of appeal to the First-tier Tribunal and the grounds seeking permission to appeal.

6 I have further taken into account the unsigned and undated witness statement of the first Appellant which was sent to the Tribunal by fax on or about 22 July 2014 and re-sent unchanged on 24 October 2014 save that she added '12. In my witness statement to the first tribunal the address was mention in the 7th paragraph which is corrected by me' (sic).If there was another statement produced for the hearing on the papers in 2014 it is not on the court file. In fact there is no such address mentioned in the 7th paragraph of her statement. Rather each statement starts with the first Appellant's address as 107 Sutton Lane TW3 4LE. The covering letter of 24 October 2014 from Pride Solicitors gave the Appellants address as 107 Sutton Lane TW3 4LE. Contrary to what is said at paragraph 8 of both statements by the first Appellant there was no tenancy agreement or utility bills provided to show the Appellants were or are living at 118-A High Street, London SE20 7EZ. I note Pride Solicitors letter of 24 October 2014 to the Upper Tribunal was sent on instructions and said that there was no further evidence to be submitted. So far as I can tell the witness statement from the first Appellant sent on 22 July 2014 was the same as the one before the judge.

7. The statement of the second Appellant which is unsigned and undated was sent to the Tribunal by fax on 22 July 2014 refers at paragraph 11 to 'In my witness for the first tribunal the address was mention in the 7th paragraph which is corrected by me' (sic). In that same statement at paragraph 7 the second Appellant does refer to a change of address but

no ‘rent agreement’ or utility bills were provided either to the judge or me. The further statement submitted on 24 October of 2014 for the Second Appellant is unchanged. The same points as made above concerning the Pride Solicitors letter 24 October 2014 apply to the second Appellant, who is named as a dependant living at the same address as the first Appellant. If there was another statement produced for the hearing on the papers it is not on the court file

8 The grounds, undated but sent by Pride Solicitors on 22 July 2014, seeking permission to appeal the judge’s determination, at paragraphs 6 to 29 essentially are no more than a recitation of law and further assertions that there was sufficient evidence to show that the Appellants engaged with the EEA Regulations or Article 8 ECHR. These grounds appeared to be incomplete but are the same grounds re-submitted by Pride Solicitors by letter on 24 October 2014 for the hearing on 27 October 2014. I assume that no competent solicitors would fail to submit the complete grounds of appeal once let alone twice and thus nothing material has been omitted.

9. The original grounds of appeal to the First-tier Tribunal, dated 20 February 2014, assert that the Respondent’s decision had failed to consider the Appellant’s entitlement to ‘registration certificate and visa’ and the Appellants’ rights under Article 8 ‘as the Appellants have developed their family and private life’.

9. The statements of the Appellants referred to above give no meaningful particulars of their private life together. Their statements equally do not give any insight into the family life they claim to have enjoyed together.

10. The Appellants in their appeal forms to the First-tier Tribunal, dated 22 July 2014, both identified themselves living at 107 Sutton Lane, Hounslow, TW3 4LE but again give no insight into that family life.

11. In the absence of evidence it is difficult to see on what basis it was said that those rights were really exercised as rights as opposed to simply the fact that it is said they have both been in the United Kingdom for a period of time.

12. The judge was faced with the Respondent's decisions which clearly showed that there had been a Home Office arrest team visit to the claimed address of the Appellants at the time of the original EEA applications, namely 12 New Close, Feltham. At which the second Appellant claimed to be living with the first Appellant, as an extended family member, who had claimed to be living at that same address.

13. The visit by immigration officials of the West London Arrest Team (WLAT) with to the address showed that the second Appellant previously had been living at the address but that there was nothing to indicate that the first Appellant was resident there. Rather the information on what was claimed to be the tenancy agreement for the premises was open to significant concern. The tenancy agreement recorded, at that address, the sole tenants were the Appellants and the tenancy agreement did not indicate shared accommodation. It was perhaps unsurprising that during the visit, in response to EEA application, concerns were raised. First, on arrival the WLAT sought entry only to find a Mr A A, a Pakistan national, date of birth 7 January 1989, present. A photograph of the second Appellant was shown and Mr A A stated that the second Appellant had lived in the house with other Pakistani males. The Second Appellant was said to have moved away from the address at 12 New Close some six months before. The visit was recorded as being on 4 November 2008 which raises concerns over the tenancy agreement at 12 New Close dated 1 January 2013. The EEA residence application was dated 15 March 2013 with reference to the 12 New Close address. In the circumstances it seems to me that the recorded date of the visit is probably wrong and should have been 2013.

14. Further at the same visit in November 2013, which seems the most likely date, Mr A A then said that he had only moved to the house about a month previously and he had never known any females to reside in the property. The WLAT concluded that the second Appellant was not living in the address which was only occupied by Pakistani males, there were no females of any nationality residing at the address. It was clear that no females had resided there according to A A; with his knowledge of the property, namely that he had previously visited the house "a lot in the past" and had never known any females to reside there.

15. It seemed to me that in the circumstances of the visit the likelihood was that neither the first nor second Appellant was residing in the property at that time nor had the first Appellant ever lived there.

16. The statements of the Appellants do not assist on the issue of when they moved to 107 Sutton Lane. In the circumstances, when plainly the question of whether they were in a subsisting durable relationship was at the forefront of the Respondent's decision, it is surprising that their evidence still does not address those matters.

18. The statement of the first Appellant, which is undated, simply refers to the visit by UKBA officers and in particular the first Appellant said with reference to their visit:

> "…Unfortunately few days before we changed our address therefore maybe it was not updated in Home Office records. Secondly it was alleged I did not provide…"

19. What the first Appellant does not do is identify the date when she claims she did move from 12 New Close. In her statement, undated, she says that they are living at 118-A High Street, London SE20 7EZ. The second Appellant describes them living at an unspecified address they were submitting a rental agreement and utility bills to prove they were residing

together at 118-A High Street, London SE20 7EZ. Unfortunately if there is such evidence of them living at that address it has not been forthcoming and there are no documents of the kind claimed. In these circumstances I find the Appellants have failed to discharge the burden of proof upon a balancing of probabilities that they were or are in any durable relationship.

20. The tenancy agreement for the address at 107 Sutton Lane is said to have been entered into but the documentation does not evidence the same.

21. Given the lack of evidence as to when they moved from 12 New Close to any other address and the noted evidence of Mr A A I do not find the Appellants have shown on a balance of probabilities that they were or are residing together at any address and in the circumstances the appeal fails in that respect. I further find that the evidence does not show on a balance of probabilities that the first Appellant was working in the United Kingdom exercising treaty rights.

22. The Respondent's reasons for refusal address the particular documentation provided and its sufficiency as well as the issue of evidence of business trading. I find that that evidence fell short of being reliable and sufficient to demonstrate that the requirements of Regulation 6 were met in terms of the first Appellant being a qualified person.

23. It was of course the Appellants' choice to have their appeals dealt with as originally appears to have been the case on the papers when the matter came before the First-tier Tribunal.

24. The grounds challenging the decision to the Upper Tribunal do not assist any further in this matter. Accordingly I find that each Appellant has failed to show that they are entitled to the residence documents sought under the 2006 Regulations.

25. Although there was only a passing reference to Article 8 ECHR the position was that it was not dealt with by the judge. As such that may be an error of law if JM (Liberia) is applicable in cases under the 2006 Regulations when no removal decision has been made or when no fee has been paid. The question remains is whether the error is material and was an Article 8 ECHR claim actually being pursued.

26. In this case, however, I do not find that the judge's adverse conclusions in relation to the durable relationship between the Appellants were in error of law. It may have been better expressed but there was no error of law. Accordingly the appeals by the Appellants fail on that issue.

27. On the case law as it presently stands I find the failure to consider the Article 8 ECHR was an error of law for it was properly raised in the grounds and it being an appeal determined on the papers there was nothing to indicate that it had been abandoned before the judge. However, the position in the judge's findings and indeed my own assessment of the evidence shows that there was no family life and that the claimed relationships between the Appellants was false. Accordingly no claim under Article 8 in relation to family life rights could have succeeded.

28. In respect of the Appellants' private lives of which each claims the other is a part, that too does not succeed. There is no evidence as to how each of them exercises private life rights of the kind to be protected under Article 8(1) other than the fact that they have lived in the United Kingdom for a period of time and had a private life here of some un-particularised sort.. Absent of evidence as to the nature of the interference in their respective private lives on the face of it there was nothing to indicate the significance of interference would be of a sufficient kind to engage Article 8(1) ECHR. It follows that Original Tribunal made no material error of law.

29. If I was wrong in that view then the Original Tribunal's should be remade. Assuming Article 8 private life rights were engaged and there was

sufficient adverse impact then I find that the Respondent's decision was lawful and properly served the purposes arising under Article 8(2) of the ECHR. I further find that the public interest is a matter of considerable significance in such cases as these. In looking at this matter now I do so in the context of Section 117A and B of the Immigration Act 2014 amending the NIAA 2002. I can find nothing that indicates that the weight to be given to the public interest should on the merits of either Appellant's claim be diminished not least in the light of their deception over their claimed relationship, their disregard of and lack of respect for immigration controls. There is also the lack of pertinent relevant evidence addressing those issues and because the public interest in this case self-evidently outweighs the bare private life claim raised by each Appellant I find in exercising the judgment that I do that the Respondent's decisions were proportionate.

30. The Original Tribunal's decisions in relation to the 2006 Regulations claims stand.

31. The Original Tribunal's decisions are remade on the issue of Article 8 ECHR. The appeal of each Appellant on Article 8 ECHR grounds is dismissed.

**ANONYMITY ORDER**

No anonymity order is required or necessary.

**TO THE RESPONDENT**
**FEE AWARD**

The original Tribunal's decision stands on the fee award and there is no basis, given the absence of evidence to support the Article 8 ECHR claims made by

each Appellant. They have been dismissed and accordingly no fee award is appropriate.

Signed Date 19 November 2014

Deputy Upper Tribunal Judge Davey