Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18681/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13th May 2014	**On 2nd June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MS VICTORIA AISHA MUSTAPHA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared in person
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria born on 4th August 1962. She appealed against a decision of the Respondent dated 7th May 2013 to refuse to issue her with a residence card as confirmation of the right to reside as the family member of an EEA national alternatively as the extended family member of the EEA national pursuant to Regulations 7 and 8 of the Immigration (European Economic Area) Regulations 2006

("the 2006 Regulations"). The Appellant states that she is the family member, alternatively the extended family member, of Mr Jose Manuel Lopes da Silva, a citizen of Portugal. The Appellant's appeal was dismissed by Judge of the First-tier Tribunal Wright sitting at Hatton Cross on 17th January 2014. The Appellant appealed against that decision and an error of law was found by Deputy Upper Tribunal Judge McCarthy sitting at Field House on 18th March 2014. Attached to this determination is a copy of Judge McCarthy's determination.

2. To summarise the error was that Judge Wright had not dealt with the Appellant's claim under Article 8 (right to respect for private and family life) of the European Convention on Human Rights. Whilst Judge Wright's finding that the Appellant could not bring herself within the 2006 Regulations was preserved, Judge McCarthy adjourned the hearing of the appeal on Article 8 grounds. The matter was listed before Judge McCarthy but as he was unable to sit on the day in question a transfer order was made by Principal Resident Judge Southern on 29th April 2014 as a result of which the hearing of the Appellant's appeal on Article 8 grounds against the Respondent's decision came before me.

3. The Appellant entered the United Kingdom in 2004, or alternatively 2006, as a visitor and overstayed. On 18th December 2008 she sought to be issued with a residence card. This application was refused by the Respondent, as was a second application made on 11th February 2012. A third application made on 24th December 2012 was refused by the Respondent and has given rise to the present proceedings.

4. The Appellant's evidence was that she met the Sponsor in 2007 through a relative. The Sponsor suffered from a number of health issues, when he was really ill she used to help him and call an ambulance. They moved in together in 2008 at an address in Edgware, Middlesex. The Sponsor's health began to improve during the course of 2012. Before that he could not go out as he was always going to and from or in hospital. The Sponsor was visited occasionally by friends and members of his own family, a brother, a sister and his mother. The Sponsor had not worked since 2007. He had begun studying at Barnet College in 2009 but had not finished his studies. He came to the United Kingdom in 2004 to find work in the building construction industry having previously served in the Portuguese Army. He injured his spine at work affecting his right side. He told his GP, who wrote a letter for him for the hearing at first instance that he had not worked for the last ten years.

The Proceedings at First Instance

5. The Judge found that the Sponsor was not a qualified person. The Sponsor was neither a worker, a job seeker, self-sufficient nor a student. Although at paragraph 29 of the determination the Judge accepted that the Appellant and Sponsor were in a durable relationship, they could not come within Regulation 8(5) of the 2006 Regulations as the Appellant could not be an extended family member of someone who was not a qualified person. Regulation 7 (family members) did not apply because they were unmarried and unrelated. The Appellant was not entitled to the issue of a residence card under the 2006 Regulations.

6. In refusing the Appellant's application for a residence card the Respondent stated that consideration had not been given to whether the Appellant's removal would breach Article 8. No notice of decision to remove was made by the Respondent when refusing the EEA application in accordance with the Respondent's normal practice. In the event that departure might be enforced the Respondent would first contact the Appellant and she would have a separate opportunity to make representations against the proposed removal. In the event that a decision to remove was made it would attract a separate right of appeal. With this in mind the Judge held he did not have to address Article 8 and he dismissed the appeal.

7. The Appellant appealed against that decision, arguing that the Judge should have dealt with Article 8. Permission to appeal was granted on the papers by First-tier Tribunal Judge Nicholson on 18th February 2014. He noted that the Appellant's grounds of appeal to the First-tier Tribunal against the Respondent's decision did include an appeal on Article 8 grounds and therefore it was arguable that the Appellant had a right of appeal by virtue of Schedule 1, paragraph 1 of the 2006 Regulations. Under these Regulations an Appellant has a right of appeal against an EEA decision on the grounds that removal of the Appellant in consequence of a decision breaches his or her rights under the ECHR. Judge Nicholson referred to a decision of the Upper Tribunal, **Ahmed [2013] UKUT 00089**. They were entitled to deal with Article 8 following the Court of Appeal decision in **JM Liberia [2006] EWCA Civ 1402**. It was arguable that the Judge erred in failing to consider the Appellant's appeal on human rights grounds under Article 8. As the parties had been found to be in a durable relationship the appeal under Article 8 was not wholly without merit.

The Error of Law Stage

8. Deputy Upper Tribunal Judge McCarthy held that under Section 86(1) of the Nationality, Immigration and Asylum Act 2002 the Tribunal was required to determine any matter raised as a ground of appeal. As the Appellant had raised Article 8 in appealing against the Respondent's decision, Judge Wright had to determine it. The Respondent had not opposed the Appellant's appeal when submitting her own Rule 24 notice and the Presenting Officer at the hearing before the Deputy Upper Tribunal Judge had conceded that the determination was legally flawed because the Judge had not dealt with Article 8.

9. The Deputy Upper Tribunal Judge was not able to complete the hearing as one piece of documentary evidence was missing. He gave directions that the Appellant was required to provide details of the current weekly amounts paid to the Sponsor in income support and disability living allowance and the current weekly council tax payments made by the Sponsor. Finally he noted:

> "In addition to the above directions the parties should bear in mind the following: Judge Wright's finding in paragraph 29 of his determination stands [the durability of the relationship] and it is accepted that the Appellant and her partner have been in a durable relationship for seven or eight years. In

determining the appeal amongst other issues I will have regard to the Immigration Rules insofar as they set out the public interest and I will consider whether the Appellant's circumstances are such that they outweigh the public interest in controlling immigration because of her partner's health condition."

The Hearing Before Me

10. In consequence, when the matter came before it was to determine the Article 8 aspect of the appeal. The Appellant appeared unrepresented, as she had before both the Judge at first instance and Deputy Upper Tribunal Judge McCarthy. As there was no request to adjourn to enable her to seek further representation, I considered that it was reasonable in all the circumstances to proceed. The Appellant indicated that she had sought advice in the past from two different representatives about this matter. The first was a solicitor whose office was closed down. The second was the firm of solicitors, IEI Solicitors, who had lodged the notice of appeal against the Respondent's original decision. She had spent a lot of money on representatives.

11. In response to the directions made by Deputy Upper Tribunal Judge McCarthy (see paragraph 9 above) the Appellant filed a letter dated 17th March 2014 from the London Borough of Barnet addressed to the Sponsor notifying him of his housing benefit in the sum of £183.25 per week from 7th April 2014 and that he would receive council tax support of £16.39 per week. The total amount of council tax support for 2014/15 would amount to £854.66. The Sponsor was receiving income related employment and support allowance and thus entitled to the maximum housing benefit which was equal to the full amount of his rent. The maximum council tax support the Sponsor could have received would have been £934.05 for the year. In fact what he was going to receive was the slightly reduced sum of £854.66. That was 91.5% of his entitlement, paid to him because he was receiving income related employment and support allowance.

12. The Appellant also filed a document setting out her case under Article 8 in which she said that she and the Sponsor had been living together for over seven years and could be regarded as a common law couple. The Sponsor was heavily dependent on her, having been diagnosed with paranoid schizophrenia, post-traumatic stress disorder and HIV. The Appellant and the Sponsor met at a soup kitchen where the Appellant showed generosity and compassion towards the Sponsor, inviting him to attend her local church and accompanying him to a drug treatment project. The Sponsor had now been free from class A drugs for over two years and had successfully completed various training and educational programmes which would not have been possible without the assistance of the Appellant. The Appellant had become the Sponsor's official carer in 2011, receiving a carer's allowance accordingly.

13. In oral testimony she said that when the Sponsor's condition was serious she had to be there for him 24 hours a day. Now he was getting better. She could not go back to Nigeria to apply for entry clearance to join the Sponsor because she needed to be with him. She had looked for her passport but could not find it. She had received a letter from the Respondent dated 26th February 2010 stating that she was free to stay

in the United Kingdom and free to work. None of the Sponsor's family members were looking after the Sponsor that was why he wanted the Appellant to be there because of his sickness. She had been told by Social Services not to leave the Appellant on his own. She had told the Judge at first instance that the weekend before the hearing the Sponsor had had a bad dream resulting in him being admitted to Chase Farm then Edgware Mental Health Hospital. There would be no other support available for the Sponsor other than what she gave. She was presently working in a care home, variable hours, sometimes as little as three hours a day sometimes as much as ten.

14. I next heard evidence from the Sponsor who adopted a statement he had made for these proceedings in which he said he had been diagnosed with paranoid schizophrenia, PTSD and HIV shortly after leaving the Portuguese Special Forces in 1990. After arriving in the United Kingdom in 2004 he developed a drug addiction which made him homeless for a few years. He used to visit soup kitchens and that was where he met the Appellant. She invited him to her local church and referred him to a drug/alcohol treatment project to address his chaotic drug problem. The Appellant had helped him enormously, paying the rent and utility bills at their address in Edgware. He was later referred to a mental health charity in Barnet and given a one bedroomed flat and commenced treatment for his HIV at the Royal Free Hospital. He would be devastated if her application was unsuccessful.

15. In oral testimony he said since he had met the Appellant his life had changed, he had improved. She had pushed him to go to school and to the church. He had been aware for a long time that the Appellant had no status to remain in the United Kingdom. It was quite a few years ago. He had tried contacting solicitors without success. The Appellant used to work as his carer receiving the carers allowance but then she found a part-time job about a year or two ago since when she had been supporting the Sponsor from what she earned. The Sponsor did not feel that his family, brother, sister and mother, helped him, in fact they gave him more stress as they accused him and discriminated against him because of his HIV status. He had discussed with the Appellant her returning to Nigeria but if she stayed as much as two days away from him bad things happened. He had tried to kill himself by taking an overdose of tablets. Last time she had found him in the road walking in his pyjamas. When the Appellant went to work there was a neighbour who could help. He also had the telephone number for the Crisis mental health team as he had started treatment with them again.

Closing Submissions

16. In closing for the Respondent it was argued that there was no evidence that the Appellant had ever been issued with a two year visit visa, the maximum she would have been issued with was six months and anyway that was the maximum she could stay at any one time even if the visa was for two years. The Appellant had thus overstayed. The last medical evidence on the Sponsor was dated 2012, there was nothing from 2014. It was not the case that the Sponsor needed 24 hour care from the Appellant as she was able to hold down an outside job. The evidence at first instance

was that the Sponsor saw members of his family. If they were discriminating against him in the way he complained it begged the question why they would want to have contact with him in the first place. The relationship had started in 2008 and yet in 2010 the Sponsor had tried to commit suicide. It could not therefore be said that it was the relationship that was saving the Sponsor's life. In any event there was no clear medical evidence as to what the current situation was. There were some health issues for the Sponsor and he received some support from other people. He had a neighbour, his family and church members. There was nothing in this case that would mean that it should be allowed outside the Immigration Rules.

17. In closing the Appellant stated that she had received a letter from the Respondent and thought she had sent it to the Tribunal. She had filled out a form to obtain a national insurance number and started college in 2009. She had advised the Sponsor to improve his English. The letter from the Respondent she had submitted to the college. She appeared then to retract her claim that she had sent the letter to the Tribunal, saying that if the college was contacted a copy of the letter could be found.

18. On 21st May eight days after the hearing (and without permission) Mr Jonathan Ashby describing himself as the Appellant's appointed advocate submitted three further documents to the Tribunal. The first was a copy of the first page of a letter written on 11th October 2008 by a firm of solicitors Nasra Imran of London SE15 to the Respondent making the Appellant's application for a residence card as the partner of the Sponsor. The second was a letter from the Respondent to the solicitors dated 26th January 2009 confirming that the application was being considered and while it was the Appellant was entitled to work. The third document was a letter from the Solicitors Regulation Authority dated 4th January 2010 noting the Appellant's claim that she had paid Messrs Nasra Imran £1,860 in fees but they could not reimburse this amount from the compensation fund as she had provided no documentary evidence of payment.

Findings

19. The only issue I have to deal with in this case is whether the Appellant can succeed outside the Immigration Rules and the 2006 Regulations under the provisions of Article 8. It has been decided that the Appellant should have a right of appeal against the Respondent's decision under Article 8. In coming to that view neither Judge Nicholson who granted permission to appeal nor Deputy Upper Tribunal Judge McCarthy referred to the Court of Appeal decision in the case of **Nirula [2012] EWCA Civ 1436**. That decision upheld an earlier decision of the Deputy High Court Judge Mr C M G Ockelton (the Deputy President of the Upper Tribunal) who had held that it was too late to raise a human rights claim for the first time in a notice of appeal since in a case which would otherwise require an out of country appeal any asylum claim or human rights claim has to be made before a notice of appeal is served. The Appellant must, adopting the language of Section 92(1) of the 2002 Act, have made his claim at an earlier stage.

20. It does not appear that the Appellant in this case made her human rights claim any earlier than her notice of appeal against the Respondent's decision. It is open to the Respondent in those circumstances to take the jurisdictional point that the notice of appeal is invalid insofar as it relates to Article 8. It is clear from the notice of decision in this case that the Respondent did take that jurisdictional point at that stage by indicating to the Appellant that if the Appellant failed to voluntarily depart a separate decision would be made at a later date, the implication being that Article 8 could be raised at that time.

21. What appears to have then happened, after permission to appeal was granted, was that the Respondent withdrew her objection to the jurisdictional point in her Rule 24 notice dated 3rd March 2014. This stated that the Respondent did not oppose the Appellant's application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral hearing to consider Article 8 only. That was confirmed by the Senior Home Office Presenting Officer who appeared before Deputy Upper Tribunal Judge McCarthy. Whilst therefore I would respectfully disagree with the Learned Deputy Upper Tribunal Judge that the position at the time the Judge at first instance heard the matter was that the Appellant had a right to have her Article 8 claim considered, there is no doubt that the position now is that the Respondent is not taking the jurisdictional point and the matter can therefore proceed by way of an Article 8 hearing.

22. It is not argued in this case that the Appellant can bring herself within the Immigration Rules, paragraph 276ADE and/or Appendix FM. She has only been in the United Kingdom a relatively short time, she has a poor immigration history, having overstayed her visitor's visa, and her two previous applications under the 2006 Regulations were both refused by the Respondent and not it appears appealed. I am conscious that the Respondent has not seen the post hearing evidence and thus cannot comment on its genuineness. However even if I accept it at face value it only confirms that an application for a residence card was made in 2008, which is not in dispute and that the Appellant was entitled to work whilst the application was being considered. What it does not deal with is the fact that that application was ultimately unsuccessful thus putting the Appellant back into the same position that she had no leave.

23. Again accepting the documentation she can show that her first solicitors were closed down by the SRA after she had paid the firm a considerable amount of money for an ultimately unsuccessful application. That does not take matters significantly further since it does not deal with the fact that she made a second application in 2012 (which was also unsuccessful). If her first application had been successful and (as she claims) she had been granted the right to live and work permanently she would not have needed to make the second application. In short the documentation while confirming some of her evidence does not confirm the crucial issue of whether she was granted some form of leave to remain and permanent right to work.

24. The Appellant cannot bring herself within the 2006 Regulations since the Sponsor is not a qualified person. She therefore seeks leave to remain outside the Immigration

Rules under Article 8.There has been a considerable amount of case law on Article 8 centring on the weight to be given to the legitimate aim being pursued by the Respondent against the impact on the Appellant's private and family life and that of close members of her family.

25. Applying the step by step approach required by the case of **Razgar [2004] UKHL 27**, the Appellant and Sponsor have a family life together since they are in a durable relationship. Although there are no removal directions, the decision to refuse the Appellant's request to remain in this country outside the Immigration Rules would impact upon their relationship since it will make it difficult for the Appellant to obtain work and potentially could leave her in a state of limbo.

26. The Respondent's decision is in accordance with a legitimate aim, namely immigration control, because she cannot meet the requirements of the Rules and she has overstayed her visitor's visa. The issue comes down to the proportionality of the interference with the established family life. Where an Appellant has no leave to remain but seeks to do so outside the Rules, the Upper Tribunal in the case of **Gulshan [2013] UKUT 640** said it is only if there may be arguably good grounds for granting leave to remain outside the Rules is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules (citing **Nagre [2013] EWHC 720**).

27. The decision of Deputy Upper Tribunal Judge McCarthy indicated that there were arguably good grounds for granting leave to remain outside the Rules, given the durability of the relationship and the Sponsor's medical condition. This meant that it was necessary for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under the Rules. One would also have to consider the practical possibilities of relocation by the Sponsor to Nigeria or by the Appellant to Portugal. In the absence of such obstacles (to relocation) it would be necessary to show other non-standard and particular features demonstrating that the removal of the Appellant would be unjustifiably harsh (assuming that removal was the issue). The Respondent's guidance states that unique factors do not generally render cases exceptional.

28. Inevitably in a case of this kind the decision is likely to be fact sensitive. If the Appellant returned to Nigeria that would disrupt the relationship. In the light of the Sponsor's ill health it is difficult to see how he could reasonably be expected to travel to Nigeria with her. Similarly it is difficult to see how the Appellant could travel to Portugal given that she would have no status to enter that country. The issue therefore is whether the separation of the parties is a disproportionate interference with their family life given the durable relationship and the Sponsor's health condition. The Appellant is providing some care for the Sponsor. He is not entirely lacking in any other form of care, notwithstanding his claims to the contrary. He receives visits from his family and I agree with the point that it is difficult to see why they would continue to visit him if they had the bad feelings towards him he claims. He is also assisted by professionals, particularly medical professionals.

29. Life would potentially be unpleasant for him if the Appellant was unable to care for him but would the outcome be unjustifiably harsh? The Appellant has overstayed and entered into a relationship with an EEA national at a time when both knew in effect that her status was precarious (the Sponsor admitting that he had known for a considerable number of years that the Appellant had no right to be here). It is not open to the parties to choose where to conduct their family life. There seems to be no good reason why the Appellant could not return to Nigeria to apply from there for entry clearance. Her reason for not so doing was that she could not be away from the Appellant for any length of time but for the reasons I give above I reject that claim. Whilst she would be away from the Sponsor for a period of time whilst the application was being considered, there is no evidence to suggest that the Entry Clearance Officer in Abuja would take an undue length of time to consider the application. During that time care arrangements could be made for the Sponsor who has access to help from the health authorities and others. I do not accept that I have been given a true picture of the help that the Sponsor currently receives from his family or that he would receive if the Appellant was not there.

30. It is far more likely that the reason why the Appellant did not return to Nigeria to apply from there was because of concerns as to whether the criteria such as the financial criteria could be met in this case. The effect of the Appellant's application, by being made in country, is to jump the queue and not subject herself to detailed requirements such as financial ones. By contrast she would have to satisfy those requirements if she made an application for entry clearance from outside the United Kingdom.

31. Whilst therefore there would be an interference in the relationship by not granting the Appellant leave to remain outside the Immigration Rules, I do not consider that it would be disproportionate to the legitimate aim being pursued. Both parties knew that the Appellant had no right to be here, I do not accept that the Sponsor is so bereft of assistance besides that of the Appellant that the consequences of the Appellant leaving the United Kingdom would be unjustifiably harsh. As the Upper Tribunal pointed out at paragraph 27 of **Gulshan**, it is not the correct approach in this case to embark on a freewheeling Article 8 analysis unencumbered by the Rules. Applying that guidance there are no compelling circumstances insufficiently recognised under the Rules such that the Appellant should be granted leave to remain outside the Rules.

32. There is evidence of the Sponsor's benefits (see paragraph 11 above), but little evidence of any earnings the Appellant has now. It is difficult to see how the Appellant is supporting the Sponsor financially and I do not find there is any form of financial dependence by the Sponsor on the Appellant in this case. Although the Appellant might have succeeded under the 2006 Regulations if the Sponsor had been a qualified person, the fact that he is not is of some significance. This is not a case of a near miss but even if it was that of itself would not assist the Appellant. As I do not consider that any interference by a refusal to grant leave outside the Rules is disproportionate, I dismiss the Appellant's appeal under Article 8. As I have

dismissed the appeal I make no fee award in this case. I make no anonymity order as there is no public policy interest for so doing.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and has been set aside in relation to Article 8. I remake the decision in relation to Article 8 by dismissing the Appellant's appeal against the Respondent's decision.

Appellant's appeal dismissed.

Signed this 30th day of May 2014

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Deputy Upper Tribunal Judge Woodcraft

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18681/2013

THE IMMIGRATION ACTS

Heard at London Field House
On 18 March 2014

Determination Promulgated
20 MAR 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

VICTORIA AISHA MUSTAPHA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION ON ERROR ON POINT OF LAW AND DIRECTIONS

1. On 18 February 2014, the appellant was granted permission to appeal to the Upper Tribunal against the determination of First-tier Tribunal Judge Wright that was promulgated on 30 January 2014. Judge Wright dismissed the appellant's appeal against the Secretary of State's EEA decision of 7 May 2013 refusing to issue a residence card.

2. The appellant argues that Judge Wright failed to reach a decision on her family life rights as protected by article 8 ECHR. It is clear that Judge Wright made no decision on this ground of appeal; in para 31 of his determination he expressly states that he is not making a decision on that aspect of her claim.

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3. I am satisfied there is merit in this argument. According to schedule 1 to the Immigration (European Economic Area) Regulations 2006, the appellant was entitled to rely on s.84(1)(c) of the Nationality, Immigration and Asylum Act 2002 which provides:

> 84(1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds–
>
> ...
>
> (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights;
>
> ...

It did not matter that this was not set out in the notice of EEA decision or that the reasons for refusal letter suggested that the appellant would have to make a separate application if she wanted to make a human rights claim. Under s.86(1) of the 2002 Act, the Tribunal was required to determined any matter raised as a ground of appeal and, as the appellant had raised this as a ground, Judge Wright had to determine it.

4. The clarity of the law on this issue is further evidenced by the fact that the Secretary of State did not oppose the appeal when submitting her rule 24 notice, and by the fact that Mr Tarlow conceded that the determination was legally flawed for the reasons given.

5. In consequence of this finding, it is necessary for me to make findings in respect of the appellant's family life rights. Unfortunately, it was not possible at the hearing to complete this task because one piece of documentary evidence is missing. For this reason, I have adjourned the hearing and give the following directions.

Directions

a. The resumed hearing is to be before me on the first available date after six weeks.

b. The appellant is required to provide the following documentary evidence within two weeks:

   1. the current weekly amounts paid to her partner in income support and disability living allowance.
   2. the current weekly council tax payments made by her partner.

c. The appellant must send the documents to:

   1. The Upper Tribunal, Field House, 15 Breams Buildings, London EC4A 1DZ(quoting appeal no. IA/18681/2013)
   2. Mr L Tarlow, Senior Presenting Officer, Upper Ground Floor, Building One, Angel Square, 1 Torrens Street, London EC1V 1NY (quoting ref M1620730)

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d. The respondent is required within fourteen days of receipt of the above documentary evidence to provide details of the current income support level appropriate for the assessment of adequacy of maintenance together with any written submissions.

e. As long as the parties comply with these directions, there will be no requirement for either to attend the next hearing.

f. Failure to comply with these directions will result in the appeal being determined on the evidence available.

Other issues

6. In addition to the above directions, the parties should bear in mind the following:

7. Judge Wright's finding in para 29 of his determination stands and it is accepted that the appellant and her partner have been in a durable relationship for seven or eight years.

8. In determining the appeal, amongst other issues, I will have regard to the immigration rules insofar as they set out the public interest and I will consider whether the appellant's circumstances are such that they outweigh the public interest in controlling immigration because of her partner's health condition.

Signed [signature] Date 18/3/2014

Deputy Judge of the Upper Tribunal