



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

Appeal Number: IA/36861/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 1st September 2014**

**Determination
Promulgated
On 15th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KAGONA ALBERT MINSAKI
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer
For the Respondent: Mr C Okech of UKIMAS Consultancy Ltd

DETERMINATION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a determination of Judge of the First-tier Tribunal Majid promulgated on 21st March 2014.

2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the claimant.
3. The claimant is a Ugandan citizen born 22nd August 1986 who applied for a residence card as confirmation of a right to reside in the United Kingdom. The application was made on the basis that the claimant is the unmarried partner of Maria Therese Bengtsson (the Sponsor) a Swedish national exercising treaty rights in the United Kingdom.
4. The application was refused on 30th August 2013. It was not accepted that the Sponsor was a qualified person as defined in regulation 6 of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). In addition, the application was refused because the claimant had failed to prove that he was in a durable relationship with the Sponsor and therefore regulation 8(5) of the 2006 Regulations was not satisfied.
5. The claimant's appeal was heard by Judge Majid on 18th March 2014 who found the claimant satisfied the requirements of the 2006 Regulations as well as the provisions of the ECHR, although the claimant had not relied upon the ECHR either in his Grounds of Appeal or at the hearing.
6. Permission to appeal was granted to the Secretary of State and at a hearing on 25th June 2014 I found that the judge had materially erred in law in failing to make findings on material matters and failing to give adequate reasons. The decision of the First-tier Tribunal was set aside with no findings preserved. The reasons for this are contained in my decision promulgated on 14th July 2014.

Re-making the Decision

Documents

7. In re-making the decision I have taken into account the Secretary of State's bundle of documents with annexes A-D, and the claimant's bundle of documents comprising 87 pages.

The Law and Burden of Proof

8. The burden of proof is on the claimant to establish that he satisfies the requirements of the 2006 Regulations, and the standard of proof is a balance of probability.

The Upper Tribunal Hearing

Preliminary Issues

9. The hearing was put back as Ms Pal had not received the claimant's bundle which had been received by the Tribunal on 24th July 2014. The hearing resumed when Ms Pal indicated that she had had sufficient time to consider the bundle and was ready to proceed.

10. Ms Pal indicated that she had made a telephone call to the Sponsor's employer, and as a result conceded that the Sponsor is in employment as claimed, and therefore is a worker, and therefore a qualified person and the requirements of regulation 6 of the 2006 Regulations are satisfied.
11. Therefore the only issue to be decided was whether the parties were in a durable relationship.
12. Mr Okech confirmed that the claimant and Sponsor would be giving evidence and that no interpreter was required.

The Claimant's Evidence

13. The claimant adopted his witness statement dated 10th July 2014. The contents of this statement may be summarised as follows.
14. The claimant and Sponsor met in Bonds pub in May 2007 and exchanged telephone numbers. Their relationship continued although the Sponsor went back to Sweden in August 2008 to continue with her studies. She returned to the United Kingdom in 2010 and studied at Westminster University until January 2011 and she thereafter returned to Sweden to finish her studies, returning to the United Kingdom in June 2011, living with the claimant in Olney Road, London. The couple moved to their current address in Kember Street in December 2011.
15. The claimant does not have employment and does not have a legal immigration status in this country and therefore is unable to provide bank statements or utility bills in his name. It is for this reason that his name does not appear on the letting contract for their property.
16. The claimant was questioned by both representatives. I have recorded all questions and answers in my Record of Proceedings and will not repeat them in full here. Where relevant I will refer to the claimant's oral evidence in my findings and conclusions.

The Sponsor's Evidence

17. The Sponsor adopted her witness statement dated 18th March 2014 which may be summarised as follows.
18. The Sponsor met the claimant while working in Bonds pub in London. She now works for Bodeans restaurant as a waitress. The Sponsor's relationship with the claimant started when they met in May 2007.
19. In August 2008 the Sponsor moved back to Sweden to continue her studies but their relationship continued and they remained in contact. In 2010 the Sponsor returned to the United Kingdom to study at Westminster University until January 2011. She then returned to Sweden to finish her studies.

20. The Sponsor returned to the United Kingdom in June 2011 and lived with the claimant in Olney Road, London until December 2011 when they moved to their current address in Kember Street.
21. The Sponsor indicated that she wanted to start a family with the claimant.
22. In her oral evidence the Sponsor revealed that she is two months' pregnant, and explained that she had not advised the claimant's legal representative of this. She explained that she had seen a nurse and her pregnancy had been confirmed, and she was waiting for a scan to take place.
23. I have recorded all questions asked of the Sponsor in my Record of Proceedings, and where relevant will refer to them in my conclusions and findings.

The Secretary of State's Submissions

24. Ms Pal relied upon the reasons for refusal letter dated 30th August 2013 in relation to the issue of durable relationship. It was accepted that the evidence given by the claimant and Sponsor was largely consistent, although Ms Pal indicate that she was not conceding the issue of a durable relationship, and asked that I attach what weight I thought appropriate to the evidence that I had heard. Ms Pal submitted that little weight should be attached to the Sponsor's claim to be pregnant, in the absence of medical evidence.

The Claimant's Submissions

25. Mr Okech made very brief submissions, pointing out that it was not contended that the claimant and sponsor had given inconsistent evidence. I was asked to find the evidence consistent and to find that the couple are in a durable relationship and therefore the appeal should be allowed. Mr Okech confirmed that the claimant did not rely upon Article 8 of the 1950 European Convention on Human Rights.
26. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

27. In view of the concession made by Ms Pal, and the evidence submitted, I find that the Sponsor is a qualified person as defined by regulation 6 in that she is in employment and therefore is a worker. I make this finding having considered the numerous payslips that have been submitted, together with a P60 End of Year Certificate for the tax year to 5th April 2014, which confirms the Sponsor's earnings and her employer. I have also attached weight to the fact that the Sponsor's earnings are shown in her bank statements, and there are two letters from her employer dated 13th September 2013 and 11th June 2014 confirming her employment, and a copy of her contract of employment has also been provided.

28. I then turned to regulation 8(5) which is set out below;

A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision-maker that he is in a durable relationship with the EEA national.

29. The Secretary of State contends that generally, in order to prove a durable relationship, an individual would have to prove that they had been living together with an EEA national Sponsor for at least two years, and that both intend to live together permanently, and that any previous relationship or marriage has broken down, and the parties are not related by birth. There may be occasions when these criteria are not met but it would still be accepted that the couple were in a durable relationship, depending upon the facts. The claimant does not dispute the Secretary of State's view as to what needs to be proved, in order to show that he is in a durable relationship.
30. I found the evidence of the claimant and Sponsor to be consistent. I take into account that no witnesses were called at the hearing to confirm the relationship, and I have attached some limited weight to a letter dated 24th February 2014 from Doreen Nambago who confirms that she has known the claimant for over seven years and that he introduced the Sponsor as his girlfriend in or around 2010, and from that date the Sponsor has joined in family gatherings.
31. I take into account that only four photographs of the claimant and Sponsor together have been produced, and that there is very little documentary evidence to prove cohabitation. However I also accept that because of the claimant's lack of legal immigration status, he would find it difficult to obtain documentary evidence such as bank statements and utility bills.
32. I attach some weight to a letter dated 1st July 2014, from the lettings manager of Alpha Estate Agents which confirms that the claimant and Sponsor have lived in their current property since 18th December 2011.
33. I have carefully assessed the credibility of the evidence given by both the claimant and Sponsor. Both have been consistent as to how and where they met and when their relationship started. Both have been consistent as to when they started living together. The evidence of cohabitation is supported to a certain extent by the letter from Alpha Estate Agents.
34. When cross-examined the claimant knew the first names of the Sponsor's parents, and stated that he had only met one member of her family, that being her sister who visited the United Kingdom. The name of this sister and the fact that the claimant had only met one member of her family was confirmed independently by the Sponsor when she gave her evidence.
35. Both the claimant and Sponsor were asked a number of questions by Ms Pal in relation to their relationship, those questions ranging from when they met, to what they had done in the weekend previous to the hearing.

36. Both confirmed that they did not spend Christmas 2013 together, as both confirmed that the Sponsor had returned to Sweden and the claimant had spent that Christmas at a friend's address in Plaistow, and both had been at that address at Christmas 2012.
37. Both were able to name each other's favourite foods and what they had done on birthdays. The evidence that they gave as to what they had done the previous weekend was consistent and both gave consistent evidence as to how they had travelled to the hearing centre, both referring to travelling on a number 17 bus, and thereafter eating at McDonald's before travelling to the hearing centre.
38. The evidence of both witnesses was thoroughly tested. There were no significant discrepancies.
39. I conclude that the claimant and Sponsor did meet in May 2007, and that they have lived together at their current address since December 2011. They have therefore lived together for at least two years, and I accept their evidence that they intend to live together permanently. I accept the Sponsor's evidence that she is pregnant with the claimant's child. I conclude that the requirements of regulation 8(5) are satisfied. Therefore the claimant's appeal is allowed under the 2006 Regulations.

Decision

The determination of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The claimant's appeal is allowed pursuant to the 2006 Regulations.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 2nd September 2014

Deputy Upper Tribunal Judge M A Hall

FEE AWARD

Because the claimant's appeal is allowed I have considered whether to make a fee award. I have decided it is not appropriate as inadequate evidence was placed before the decision-maker. This appeal has been allowed because of further evidence submitted after the appeal was lodged. There is no fee award.

Signed

Date 2nd September 2014

Deputy Upper Tribunal Judge M A Hall