



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/45505/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 22 July 2014

Promulgated

On 25 July 2014

Before

Deputy Upper Tribunal Judge MANUELL

Between

MRS MABEL MERCY FRANCE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel
(instructed by Visalogic.net)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted on 6 May 2014 by First-tier Tribunal Judge PJG White against the dismissal of her appeal seeking the issue of a residence card under regulation 7, alternatively regulation 8, of the Immigration (European Economic

Area) Regulations 2006 (as amended) (“the EEA Regulations”) by First-tier Tribunal Judge Kelsey in a determination promulgated on 26 March 2014. The Appellant is a national of Ghana, born on 20 October 1960. She claimed that she was married to an EEA national exercising free movement rights in the United Kingdom.

2. Judge Kelsey found that the Appellant had not shown that she had satisfied the EEA Regulations. The Appellant had failed to prove either a valid marriage (see Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC)) or a durable relationship. The judge went on to consider very briefly the Article 8 ECHR claim which the Appellant had raised in her Notice of Appeal, but there were no Removal Directions and no Section 120 Notice. Hence the First-tier Tribunal had no jurisdiction to address Article 8 ECHR: see Lamichhane [2012] EWCA Civ 260.
3. Permission to appeal was granted by First-tier Tribunal Judge PJG White because he considered it arguable that the judge had failed to take into account and/or make adequate findings concerning the Appellant’s evidence as to her claimed durable relationship, even if he had found for good reasons that they were not lawfully married.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, in the form of a letter dated 16 June 2014, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.
5. Mr Bandegani for the Appellant accepted that there could be no challenge to the proxy marriage findings. The judge had, however, misdirected himself as to the meaning of regulation 8(5), which did not prescribe living together nor any specific period for a relationship to be considered durable. The judge’s findings about the durable relationship could be contrasted unfavourably with the depth of his analysis of the proxy marriage issue. The judge failed to address the evidence which had been provided by the Appellant, which was more substantial than the judge had stated. There was a lack of clear credibility findings, and some contradiction as the judge had described the Appellant and her partner as “pleasant and straightforward people”: see [16]. The determination should be set

aside for the failure to provide adequate and clear reasons.

6. Mr Bandegani further submitted that the judge's treatment of the Article 8 ECHR claim raised had also been inadequate. Razgar [2004] UKHL 27 should have been followed and a proper analysis provided. The tribunal referred him to Lamichhane (above).
7. Mr Wilding for the Respondent (the Secretary of State) submitted that the determination contained no material error of law. The determination had addressed the durable relationship point at [20] and [21]. The witness statements provided had been vague and there was little independent evidence as the judge had correctly said. There had been nothing to show that the relationship could be seen as durable. There was nothing further required so far as Article 8 ECHR was concerned.
8. In reply Mr Bandegani reiterated his submission as to the judge's treatment of the evidence of the relationship relied on. There was a lack of clarity and [16] to [21] of the determination were addressed to the proxy marriage issue. The judge had misunderstood about living together.
9. The tribunal reserved its decision which now follows. The tribunal finds that there was no material error of law in First-tier Tribunal Judge Kelsey's determination.
10. The judge had noted that the Appellant had admitted to being a long term overstayer who had breached her visit visa. At [9] and [10] the judge summarised the brief witness statements. At [11] and [12] the oral evidence given was summarised. Even by then cracks in the evidence were apparent. The judge then inadvisably and somewhat surprisingly described the Appellant and her partner as "pleasant and straightforward people" at [16], perhaps in the hope of softening the blows which were to follow at [20] and [21].
11. When analysed in detail by the judge from [16] to [21], the Appellant's evidence fell apart. The judge found that there was a lack of detail and explanation, and there was very little evidence of living together. Yet the Appellant claimed to have been living with her claimed partner since January 2009, having met him in 2008. That was her definition of the relationship, not the

judge's. Here it is important to note that at [21] the judge was evaluating the evidence to support the claims presented to him, not misdirecting himself as to the meaning of regulation 8(5). As the judge did not accept the evidence provided, there was no need for him to consider whether the gloss on regulation 8(5) offered by the Secretary of State in the reasons for refusal letter was correct.

12. The Appellant's evidence was exceedingly thin. The witness statements were short and perfunctory. There was confusion about addresses. There were no independent documents jointly addressed to the Appellant and her partner at the same place. The judge's description of the evidence at [21] was accurate.
13. The durable relationship issue had been raised by the Secretary of State in the reasons for refusal letter, and was not the primary case advanced by the Appellant. It was secondary. The Appellant's counsel at the hearing before Judge Kelsey (not Mr Bandegani) said as much at [8] of her skeleton argument. Having given ample reasons for rejecting the Appellant's main case, which was based on cohabitation pursuant to marriage, there was little more which the judge needed to say about a relationship which he found had not been proved.
14. It has to be said that the judge might have avoided an application for permission to appeal had he been rather more explicit in the rejection of the Appellant's evidence, and perhaps discussed the secondary case in a separate paragraph. But when the determination is read as a whole it is plain that the judge found that the Appellant's claims had not come anywhere near to being substantiated. Those findings were open to the judge on the evidence which the Appellant had produced.
15. For the reasons given above, the Appellant's onwards appeal fails and the determination stands.

DECISION

There was no material error of law in the First-tier Tribunal's determination, which stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell