



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

Appeal Number: IA/02800/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 27th November 2014**

**Decision & Reasons Promulgated
On 14th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**EMMANUEL ACHEOMPONG GYAMFI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor of Burton & Burton Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 18th September 2014 Judge of the First-tier Tribunal Caruthers gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Sangha who dismissed the appeal against the decision of the respondent to refuse to issue a residence card as an extended family member of an EEA national applying the provisions of paragraph 8(5) of the Immigration (European Economic Area) Regulations 2006 on the basis that the appellant was in a durable partnership with his sponsor.
2. When granting permission Judge Caruthers noted that the grounds of application did not seek to suggest that the appellant could succeed by reference to human rights

issues, the appeal being pursued on the basis that the appellant was in a “durable relationship” with his Polish partner as provided for under paragraph 8 of the 2006 Regulations.

3. Judge Caruthers noted that the grounds complained that the judge had used the phrase “no evidence” when he probably meant that there was no documentary evidence; had drawn an inappropriate inference from email exchanges between the appellant and his partner; and had not applied the principles set out in *Papajorgji (EEA spouse – marriage of convenience) Greece* [2012] UKUT 00038 (IAC).
4. Whilst Judge Caruthers thought that some of the judge’s points were valid, but that the judge may have erred in some of the ways alleged and so there was sufficient in the grounds to make a grant of permission appropriate.

Submissions

5. At the hearing before me Mr Mohzam confirmed that the durability of the relationship was the sole issue, it having been accepted before the First-tier Tribunal that the appellant did not meet the proxy marriage requirements for his relationship with the sponsor. The grounds of application were relied upon. He made reference to paragraph 18 of the decision which, he thought, suggested that the judge had reached the conclusion that the appellant’s evidence was contrived when there had been no allegation of deception made by the respondent particularly in relation to the addresses at which the parties had lived. Further, he contended that the judge had made no proper credibility findings in relation to the oral evidence. He argued that the totality of the evidence should have led to a conclusion in the appellant’s favour although the judge had not made it clear whether or not the parties’ evidence had been found to be credible.
6. Mr McVeety drew my attention to the response of 30th September 2014. He argued that the grounds seeking permission amounted simply to a disagreement with the cogently reasoned findings of the judge. He pointed out that the parties were not, at present, at risk of removal so the remedy was for them to make a fresh application with documentation which could not be questioned. The judge had not concluded that the documents submitted were false simply that they were unreliable and so could not be accepted to support the appellant’s claims. The decision was not perverse and the judge was entitled to reach the conclusion that the appellant had not shown that he was an extended family member as a partner in a durable relationship.
7. Mr Mohzam concluded by arguing that the documentary issue had not been put to the parties by the judge who had failed to consider the totality of the evidence.

Conclusions

8. After considering the matter for a few moments I announced that I was not satisfied that the decision showed any material errors on points of law and should stand. I now give my reasons for that conclusion.
9. The decision is comprehensive and well reasoned, particularly in relation to the salient issue which was the durability of the claimed partnership between the

appellant and his Polish sponsor. Where the judge refers to having no evidence of cohabitation (paragraph 17), he was clearly referring to evidence from before June 2013 when the parties had started living together in March 2013. The judge is careful to draw attention to the documentary evidence which might have supported the relationship after that date including a letter regarding electoral registration. As to the reference to there being no evidence of communication between the parties since December 2012, the judge was evidently referring to documentary evidence because that is the context in which the paragraph was written. Indeed, the judge goes on, in the same paragraph, to refer to the oral evidence relating to the circumstances in which the parties met and their living arrangements.

10. Although it is suggested that the judge may have reached conclusions about matters which were not raised in the refusal, he was entitled to refer to inconsistencies in the evidence making it unreliable and thus leading to the conclusion that the parties had not shown that they were in a durable relationship. That issue was clearly in issue as the respondent's refusal made clear so the appellant cannot have been disadvantaged by the judge's consideration of it in the decision. The judge's conclusion that, having regard to the evidential inconsistencies, the documentary evidence of cohabitation was contrived was a conclusion open to him imparting unreliability rather than falsity in the document itself. It cannot be said that the judge did not reach a clear finding on credibility as that is self-evident from the judge's analysis of the evidence examined, including the claim that the parties had used social media to further their relationship, and the inconsistencies found. Further, the findings of the judge were open to him for the reasons given and the grounds of application amount to no more than a disagreement with those conclusions. No material error is shown.
11. No human rights issues arise as removal of the parties is not imminent and a further application can be made if necessary.

NOTICE OF DECISION

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity

Anonymity was not requested before me nor do I consider it appropriate to make a direction to that effect in this appeal.

Signed

Date 13/01/2015

Deputy Upper Tribunal Judge Garratt