Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/19571/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd August 2015	**On 14th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS LEA ACOSTA ABASOLO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Magsino (LR)
For the Respondent: Mr N Bramble (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Zahed promulgated on 2nd April 2015, following a hearing at Hatton Cross on 4th December 2014, in which the judge dismissed the appeal of Ms Lea Acosta Abasolo, whereupon the Appellant applied for, and appears to have

been granted permission to appeal to the Upper Tribunal, so that the matter comes before me today.

2. I say that permission "appears" to have been granted because the grant of permission, dated 10th June 2015, while certainly containing the statement that "the application for permission is granted", makes it clear in three numbered paragraphs, that the contrary is the case. In particular, paragraph 3 states that, "the grounds and the determination do not disclose an arguable error of law". Even so, the matter has ended up in the Upper Tribunal for determination.

The Appellant

3. The Appellant is a female citizen of the Philippines, born on 7th April 1978, and she made an application to the Respondent Secretary of State, on 27th February 2014, for a residence card as confirmation of the right to reside in the UK as a family member of an EEA national, exercising treaty rights, namely, one by the name of Mr Sagisi. The Respondent refused the application on 10th April 2014.

The Judge's Determination

4. When the matter appeared before Judge Zahed on 4th December 2014, it was conceded by Mr Simpson of Counsel, that there was no Article 8 ground raised (see paragraph 5). The issue was whether there was a "durable relationship" (see paragraph 5). The judge was not satisfied that this was the case for a number of reasons. First, the Appellant was living with her brother at his address in Newport, Wales, and not with the Sponsor.

5. Second, in confirmation she confirmed that she was living at her brother's address in Wales from 19th May 2011 until her visa expired on 2nd October 2012 (see paragraph 7).

6. Third, the documentation that she submitted, in relation to a rent book for [ ], where she claimed to have been living, showed that "she had used Tipp-Ex to change the date of the rent book" (paragraph 9). As the judge observes, "I note that the Appellant's name has been written over a previous name that has been Tipp-Ex'd. I find that this rent book has been falsely created …" (paragraph 9).

7. Fourth, the judge concluded that, "I find there would be no reason for the Appellant to be a tenant at [ ] given the fact that she was working in Newport at a care home for 24 hours over a seven day period …" (paragraph 10).

8. Fifth, the judge concluded that, "all the evidence submitted to show that she has been living there has been fabricated for the court hearing" (paragraph 10).

9. Sixth, there were letters of support from witnesses who claimed that they had seen the Appellant in a two year relationship with the EEA Sponsor.

As the judge noted, however, "none of these witnesses came to court to be cross-examined …" (paragraph 11).

10. Seventh, there were photographs of the Appellant and the Sponsor in bed together, but upon giving evidence, the judge noted that, "the Sponsor accepted that the photographs were created entirely for the court hearing to show that they are together" (paragraph 12). For all these reasons, the judge was not satisfied that the parties were living together as claimed. Indeed, the judge went on to say that, "the EEA Sponsor is still married has not begun divorce proceedings and I find he does not intend to do so" (paragraph 14).

Grounds of Application

11. The grounds of application state that the judge did not make any reference to the burden of proof. On 10th June 2015, Judge Mark Davies appears to have granted permission to appeal, although all the indications are that he did not intend to do so given his three numbered paragraphs.

12. On 26th June 2015 a Rule 24 response was entered by the Secretary of State making it quite clear that the grounds are "a sustained disagreement with the findings which are not flawed by error in law" (paragraph 7).

Submissions

13. At the hearing before me, the Appellant was represented by Mr L Magsino. He appeared with the Sponsor, Mr Sagisi, who sat at the back of the courtroom. The Appellant took the witness stand. Mr Magsino then simply made one submission. He said that the relationship is still ongoing. The Sponsor was in attendance in court. The relationship was a durable one. He had nothing further to add.

14. In reply, Mr Bramble submitted that he would, in the circumstances of this case where no explanation had been given whatsoever as to what the issues were before the Tribunal, simply rely upon the Rule 24 response. No issues had been identified. There could be no error of a law finding.

15. In his reply, Mr Magsino simply replied to say that the relationship was subsisting and that he had the witnesses in front of court to confirm this.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. The findings of the judge are a complete answer to the Appellant's claim. These findings are summarised at paragraph 13 of the determination.

17. First, the judge did not find that the couple were an unmarried couple. Second, he did not find that they had been living together for two years. Third, he did not find that they were living as a couple at [ ]. Finally,

he did not find that they were consistent and the claim was not credible. Indeed, he went on to find (at paragraph 14) that Mr Sagisi still was married and there was no intention on his part to begin divorce proceedings. Furthermore, there was evidence before the judge that the claim had been fabricated with Tipp-Ex being used to falsify a rent book. This case should never have been set down for a hearing before this Tribunal. This is not least given the wholly inadequate submissions of Mr Magsino before this Tribunal today. No issue was identified whatsoever. All that was said was that the parties are living together. Mr Bramble's Rule 24 response to that was adequate in itself to dispose of this submission. There is no error of law.

Notice of Decision

18. There is no material error of law in the original judge's decision. The determination shall stand.

19. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 12th August 2015