



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

Appeal Number: IA/19627/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2015**

**Decision & Reasons Promulgated
On 6 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MS FATIMA KANADJQUI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

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

DECISION AND REASONS

1. The appellant is a citizen of Somalia and her date of birth is 18 March 1990. She made an application for a residence card as an extended family member pursuant to the Immigration (European Economic Area) Regulations 2006. The Secretary of State in a decision of 14 April 2014 refused the application. The reason for the decision was that it was not accepted that the relationship between the appellant and the EEA national, Mr Abdoulaye N'Diaye, a French national exercising treaty rights was durable. The decision maker referred to the policy of allowing unmarried partners to come to the UK to live here namely that

relationships must be sufficiently robust to justify allowing them to come here to enable them to live together and in order to assess durability it is expected that an applicant would have to demonstrate that she had been living with the EEA national sponsor for at least two years. It is raised in the decision letter that the representatives did not state how long the appellant has been in a durable relationship. It was accepted that the appellant had produced a birth certificate but she did not provide any evidence of cohabitation with the EEA sponsor or any evidence that they are in a relationship akin to marriage.

2. The appellant appealed against the decision and the appeal was dismissed by First-tier Tribunal Judge Balloch in a decision that was promulgated on 6 October 2014. The appeal was determined on the papers at the request of the appellant. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth in a decision of 26 November 2014. Thus the matter came before me.

The Decision of the FtT

3. The Judge had before him an appellant's bundle which contained the witness statements of both the appellant and her partner. Their evidence was that they live in London with their child. They met in December 2012 and started living together in January 2013 and their daughter was born on 13 November 2013. The Judge made material findings at paragraphs 16, 17, 18, 19, 21, 22, 23 and 24 of the determination:

"16. The copy documentation demonstrates the appellant and the sponsor living at the same address in London. The dates on it cover the period between November 2013 and July 2014. The birth certificate shows the same address and that the child was born in London on 13 November 2013 and the appellant and the sponsor are named as parents. The copy documentation provided indicates that the appellant and the sponsor had been living together at the same address since about at least November 2013 and the birth of their child demonstrates their relationship.

17. The relationship between the appellant and the sponsor clearly has not been one of very long duration notwithstanding the birth of a child, given that the appellant and the sponsor only met in December 2012. The evidence from the witness statements is that they started living together in about January 2013. The application form (a copy of which is contained within the respondent's bundle) is dated 13 January 2014. The appellant and the sponsor had therefore only been in a relationship for about a year at the date of the application.
18. Whilst it is not stated as an absolute requirement in terms of Regulation 8(5) of the 2006 Regulations that it must be demonstrated that the relationship between an unmarried couple has lasted at least two years to demonstrate it is a durable relationship, this is the usual requirement. This accords with the Immigration Rules in respect of unmarried couples. The respondent has explained in the refusal

letter that there is a long standing policy of allowing unmarried partner of EEA nationals settled in the UK to live with them if the relationship meets specific criteria as set out in the Immigration Rules. It is stated that these were developed in parts to identify partnerships that should be considered as “durable” for immigration purposes. It is thereafter noted that to demonstrate that a relationship may be considered as a “durable” one, there should be evidence of it having lasted at least two years.

19. The UKBA Guidance dated 1 January 2014 in respect of applications for a Residence Card clearly states:

‘If you are living with a partner who is not your spouse or civil partner, you will need to provide proof that you are in a durable relationship. You would generally need to show us that you have been in a subsisting relationship for two years or more. This could be through joint bank or building society statements, joint tenancy agreements, council tax bills or evidence that you are both paying utility bills at the property at which you reside.’

21. Given the limited information and supporting documentation that was provided for the purpose of this application, I find that the respondent was entitled to reach such a conclusion. The decision is in accordance with the law.
22. Subsequent information provided for the purpose of the appeal demonstrates that the relationship had only been of short duration at the time of the application and the date of decision. It fell far short of two years. The relationship still falls short of the two years referred to in the relevant guidance for applications of this kind.
23. The application has been a premature one in the circumstances, made when the relationship had only been subsisting for just over a year, according to the evidence in the witness statements. On this basis, I dismiss the appeal. I do not find that the appellant has demonstrated to the required standard of proof that she has met the criteria to entitle her to a Residence Card as confirmation as a right of residence in the UK.
24. It is open to the appellant to make a further application providing full information with supporting documentation to demonstrate she is in a subsisting relationship with her sponsor and can meet the criteria in respect of being the unmarried partner of an EEA national exercising Treaty rights.”

The Grounds of Appeal

4. It is argued that the appeal before the Judge is governed by the 2006 Regulations and not the Immigration Rules. The Judge accepted that the appellant and her partner have lived together for a year and that they have a child together and he should in those circumstances have gone on to allow the appeal.

Error of Law

5. The appellant did not attend the hearing before the First-tier Tribunal and she did not attend the hearing before me. There is a letter from Chancery CS Solicitors representing the appellant of 27 January 2015 indicating that they are not able to attend the hearing and that the appellant wishes for the appeal to be determined on the papers. There was no further evidence relied on by the appellant served and filed in accordance with the directions of the Tribunal.
6. Mr Wilding relied on the Secretary of State's response of 22 December 2014 pursuant to Rule 24 of the 2008 Regulations. However, on further consideration of the matter, having taken into account paragraph 22 of the determination, he concluded that the Judge made a material error in considering the evidence at the date of the application and the decision of the Secretary of State. He should have considered the evidence at the date of the hearing before him. I agree with Mr Wilding that this is a material error of law and I set aside the decision of the First-tier Tribunal to dismiss the appeal under the 2006 Regulations and re-make the appeal.
7. The decision of the Secretary of State was made on 14 April 2014. There are statements from the appellant and her partner dated 25 July 2014. There are bank statements and utility bills relating to the appellant and her husband. There is a bank statement in their joint names dated January 2014. There are poorly photocopied photographs in the appellant's bundle. The evidence before me is insufficient to establish that at the date of the hearing before me the relationship is durable. I have of course attached weight to the evidence and taken into account the findings of the Judge who accepted that at the date of the application and decision there was a relationship between the appellant and the sponsor and that they were living together. There is no evidence before me that the relationship is durable at the date of the hearing. I considered adjourning the hearing in order to enable the appellant to submit further evidence on this point, but decided against this. She is represented and has not submitted further evidence notwithstanding the directions of the UT.
8. There is no evidence before me that the decision would breach Article 8 of the 1950 Convention on Human Rights. This was not determined by the FtT and was not an issue raised in the grounds seeking leave to appeal. In any event, in the absence of any up to date evidence, I dismiss the appeal under Article 8.

Notice of Decision

9. The appeal under the 2006 Regulations is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 6.2.15

Deputy Upper Tribunal Judge McWilliam