



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

Appeal Number: IA/26558/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2015**

**Decision & Reasons
Promulgated
On 1 May 2015**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MR ALEXANDER BIRTS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr Kandola

DECISION AND REASONS

1. The Appellant is a citizen of the United States of America born in 1978. He appealed against a decision of the Secretary of State made on 23 May 2014 to refuse to grant leave to remain as the unmarried partner of a person exercising EEA treaty rights.
2. The Respondent in considering the five year route under the Immigration Rules was not satisfied that the Appellant's partner Mr Florent Gilles was settled in the UK. Also that Mr Gilles was a French national as only a

photocopy of his passport had been submitted when the document itself should have been. Further, there was no evidence that he and the Appellant have been living together akin to a married couple for a 24 month period prior to date of application. In addition, the Appellant had failed to provide six months' pay slips and bank statements covering the same period, as well as contracts of employment/employers' letters to confirm his and his partner's yearly salary and whether the jobs are permanent or not. He could not thus satisfy the financial requirements.

3. As for the ten year route, he could not succeed, again because his partner was not settled in the UK. It was also noted that his partner has lived in the UK for only three months. There were no insurmountable obstacles stopping them from continuing their relationship in either France or the USA. The Respondent also refused the application under paragraph 276ADE (private life).
4. He appealed.
5. The appeal was determined without a hearing 'on the papers' by Judge of the First-tier Tribunal Chohan. In a determination promulgated on 21 October 2014 he dismissed the appeal under the Immigration Rules and under the Immigration (European Economic Area) Regulations 2006.
6. His findings are at paragraphs [4] to [7] of the determination.
7. He found that the Appellant entered into a civil partnership with Mr Gilles on 15 April 2014.
8. However, he found the difficulty in the case was that '*all the documentation submitted related to the Appellant himself*' [5]. Apart from a statement there was nothing in respect of Mr Gilles. It was not even clear what his nationality is. Even if he is a European national there was '*no evidence before (the judge) that he is exercising treaty rights*' [5]. Further, '*According to the civil partnership deed (Mr Gilles) is a fashion journalist but again, there is no evidence to that effect. Indeed, there is not even evidence to establish that the civil partner is in the United Kingdom*' [5].
9. Moreover, there was no evidence to establish that the Appellant is a fashion product developer. Finally, '*apart from bank statements there is no evidence in respect of his financial circumstances*' [6].
10. He sought permission to appeal which was granted by a judge on 5 December 2014.
11. At the error of law hearing the Appellant attended. He represented himself. He said his partner, Mr Gilles was abroad.
12. The grounds, in summary, were that documentation submitted with the application and which therefore should have been before the judge, such as evidence of his partner's nationality and of the Appellant's employment

which indicated his income, were not considered. Employment contracts for the partner were not submitted because he is a freelance fashion journalist.

13. The Appellant said he understood that the case could not succeed under the Immigration Rules not least because his partner Mr Gilles, having lived only briefly here, was not settled in the UK.
14. Mr Kandola thought that the Appellant had inadvertently submitted the wrong application form. He submitted an application under the Rules which had required him to submit copies of Mr Gilles' passport. Mr Kandola thought that the EEA application form required the submission of the passport rather than photo copies, which would have resolved the issue of the nationality. It was clear that he is a French national.
15. However, the crux was whether on the evidence before the judge it was shown that Mr Gilles was a '*qualified person*'.
16. The Appellant on that point repeated that Mr Gilles is a freelance journalist. He accepted, however, that there was no evidence submitted to the First tier Tribunal to show that Mr Gilles was a '*qualified person*'. There was no evidence of payments received, no contract of employment, no tax or national insurance details. He accepted that the case could not succeed under the regulations as it could not succeed under the rules. He said he would reapply.
17. I agreed. On the evidence before him the Appellant could not satisfy the Immigration Rules not least because Mr Gilles, having lived in the United Kingdom for only about three months was not settled. He does not have indefinite leave or a permanent right of residence. There was also no dispute that there was no documentary evidence before the judge that Mr Gilles, a French national, was exercising treaty rights. The Appellant could not succeed under the EEA Regulations.
18. The judge's decision is sustainable for the reasons he gave. There is no material error of law.

Decision

The decision of the First-tier Tribunal shows no material error of law and the decision dismissing the appeal shall stand.

No anonymity direction is made.

Signed

Date **30 April 2015**

Upper Tribunal Judge Conway