



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

Appeal Number: IA/30393/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2015**

**Decision & Reasons
Promulgated
On 20 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR SEGUN JEREMIAH ADEKOYA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Sobande, OA Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. This appeal is against the decision of First-tier Tribunal Judge Ransley who, on 6 October 2014, decided the present appeal on the papers. The appeal to the Upper Tribunal against the decision of the First-tier Tribunal is to determine whether the appellant has identified a material error of law.

2. The appeal before Judge Ransley and the application before the Secretary of State previously had been to determine whether the appellant was the partner of an EEA national who was in a durable relationship with that EEA national. It was not simply a case of establishing that the parties lived under the same roof. It was a requirement of the Regulations, specifically under regulation 8(5) of the EEA Regulations 2006 (the EEA Regulations), that they were in a relationship akin to marriage in the sense that they had to be partners, meaning sexual partners.

Consideration of the merits of the present appeal

3. Judge Ransley determined the case on the papers because that was requested on the appeal form by the appellant. There is no lower or higher standard of proof which applied to cases decided without a hearing. It was open to either party to submit witness statements, which would not, without holding an oral hearing, be challenged. It would also have been open to either party to rely on any documents. Specifically it would have been open to the appellant to submit documents to confirm his cohabitation with the sponsor at the latter's home. The issue had to be determined on the balance of probabilities.
4. I have carefully read Judge Ransley's decision. It is unfortunate that the Judge appears to have conflated the requirements of Regulation 8(5) with those of Regulation 7. Regulation 7 enables a family member of an EEA national, including a spouse or civil partner, to establish a right to reside in the UK with a person qualifying under the EEA Regulations. Regulation 8 (5) on the other hand requires the person relying on that relation to show that he is in a durable relationship with an EEA national.
5. Having carefully considered Judge Ransley's decision and having considered the submissions made by the Secretary of State at the hearing I am not satisfied that that the error which has been identified is material one. The Judge enjoyed a wide ambit of discretion in terms of which evidence she accepted and rejected as well as what weight she attached to that evidence. I have concluded that she was entitled to conclude on the written documents supplied that the appellant did not qualify under Regulation 8(5) because he was not in a durable relationship with an EEA national. I have looked carefully at the documents relied on by the appellant. None of those documents refer to the parties living at the same address at the same time. Furthermore residence in the same property does not necessarily connote a relationship or partnership akin to a sexual partnership. A copy of a tenancy agreement, which had been supplied to the Secretary of State, was produced before the Judge. I am not sure that all the Immigration Judge's concerns about that document were justified, but the judge was entitled to take into account the fact that it did not state the commencement date for the payment of rent or the correct rent day in each month, which would be very basic omissions from such a legally enforceable document. The tenant's signature appears not to have been witnessed. It is therefore a document that the Judge was entitled to be sceptical about. There were sufficient concerns over the documents

produced to conclude that it had not been established that the appellant was living with the sponsor in a relationship akin to marriage or civil partnership for the period claimed, even if they lived at the same address.

6. It was very easy for the appellant and the sponsor to claim, as they did, that rent for the property where they claimed to live was paid in cash each month, but no bank statements were produced to corroborate the payments of rent. Given that the tenancy had been in existence for four years at the date of the hearing before the judge one would expect some evidence of payment of rent. One would also have expected to see evidence of payment of joint bills at the property concerned.
7. It is not for this Tribunal to substitute its view of the case for that of the Immigration Judge. It may well have been that were I hearing this appeal I would have found in favour of the appellant, with whom I sympathise, but unfortunately that is not the issue before the Upper Tribunal. Despite the cogent and helpful arguments of Mrs Sobande, I have concluded that there was no material error of law in the decision of the First-tier Tribunal.
8. It is possible that if the appellant were to submit a fresh application based on his fuller evidence it may be successful.

Additional evidence

9. There is an application to adduce fresh evidence before the Upper Tribunal but Mrs Sobande has not placed any reason before the Tribunal as to why those new documents were not supplied in support of the original application and they were not before the Immigration Judge and therefore she cannot be criticised for not taking them into account. The only document that I do think might have been of relevance is the document which is a joint bank statement. As I say, it may be that a fresh application can be made which is supported by that document. However no adequate reason was given for failing to produce these documents before the First-tier Tribunal and I can see no proper basis for admitting them at this stage.

Notice of Decision

The appellant's appeal against the decision of the FTT under the EEA regulations, alternatively, on human rights grounds is disused. Accordingly, the respondent's decision to refuse to recognise the appellant as an extended family member of an EEA national stands.

No anonymity direction is made.

Signed

Date **20 January 2015**

Deputy Upper Tribunal Judge Hanbury

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **20 January 2015**

Deputy Upper Tribunal Judge Hanbury