



IAC-FH-NL-V1

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

Appeal Number: IA/43635/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 September 2015**

**Decision & Reasons Promulgated
On 13 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**OSAYI JENNIFER OSHODIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel instructed by Frederick Rine Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Nigeria born on 30 September 1992 and on 14 June 2014 she applied for a residence card as confirmation of her right to reside in the UK under Regulation 8(5) of the Immigration (European Economic Area) Regulations 2206 ("EEA Regulations") on the basis that she was an extended family member of Namir Soilihi, a French national, and thus in a durable relationship with an EEA national.

2. That application was refused on 8 September 2014. The Secretary of State stated that she expected the appellant to demonstrate she had been living together with her EEA national in a subsisting and durable relationship for an acceptable period of time and this was normally two years. The appellant provided various documents dating from 2012 to present date but they only showed evidence that the EEA sponsor had resided with her since 2013 and this evidence was also limited and was not from several various sources. All other evidence was addressed to the appellant herself and did not demonstrate cohabitation.
3. The appellant provided two tenancy agreements but the issuing party authority could not be appropriately verified and there was no way for the respondent to verify whether the documents had been altered or tampered with or produced for the purpose of the application of a residence card.
4. The tenancy agreement was dated 2 January 2012 until 29 October 2012 but it was not consider evidence of a relationship as the tenancy agreement had not been authenticated by the issuing party as accurate.
5. Further, on 6 April 2007 a legal requirement was placed on landlords to hold deposits taken as a result of shorthold tenancy agreements within the government endorsed tenancy deposit protection. There was no such tenancy protection document. There was a lack of evidence that they were in a durable relationship.
6. There was also a lack of evidence that the EEA sponsor was exercising treaty rights as a worker. He had provided a wage slip for May 2014 and an employer contract dated 1 May 2014 from the Institute of Small Business Management but the Secretary of State had undertaken various checks to verify the employment but has been unable to do so and there was no trace of the EEA family member's employment for the stated period for this claimed employer.
7. The department contacted the claimed employer by telephone on 5 August 2014 at the Institute of Small Business Management, First Floor, 21-23 Woodgrange Road Limited, E7 0BA (Telephone No: 0208 522 1565). A male claiming to be the manager of the company stated that the EEA sponsor worked for the company and provided all relevant details regarding your sponsor's start date and job title - insurance number.
8. Following the telephone calls the respondent conducted interagency checks which confirmed that there were no employment or self-employment records held regarding the EEA sponsor's employment in the UK.
9. From this evidence gained it was clear that the EEA national sponsor was not exercising treaty rights in the United Kingdom as a worker.
10. The appeal was heard by First-tier Tribunal Judge J.D.L. Edwards and was determined on the papers on 14 March 2015. He set out the following:

"Evidence

12. The *gravamen* of this case is whether the appellant has established that she has been in a durable relationship with the sponsor for a period of two years. To support this she has produced a number of documents. There are two tenancy

agreements in joint names. Further it is suggested that the sponsor is not exercising employment rights, because when the respondent sought to verify the claims made in the application, there were no official records to show employment or self-employment.

13. In her statement the appellant says, in effect, that the material submitted is enough to justify the grant of the residence card. The sponsor in a statement does not comment on the absence of records of his employment.

Findings

14. I remind myself that the onus of proof in this case rests with the appellant to the civil standard of a balance of probabilities. I have considered the written submissions lodged by the appellant's solicitors.
15. For this to be regarded as a durable relationship, there has to be evidence. There is very little by way of acceptable documentation to show that that is the case. Only one bank statement is in joint names, and is dated September 2014, that is after the date of application. The tenancy agreements are not in the appropriate form.
16. I therefore find that the appellant has not produced adequate evidence to establish that she is in a durable relationship with the sponsor within the meaning of the Regulations.

Conclusions

17. I therefore conclude that the appellant has not placed before me sufficient credible evidence to show to the standard of proof required of appellants in these cases that she has satisfied all the requirements of the Regulations and I dismiss the appeal."
11. An application for permission to appeal was made on the basis that the judge erred in law in finding at paragraph 12 that there were no official records to show employment or self-employment as the appellant submitted documents to show his spouse was self-employed.
 12. The judge also erred in not requesting the Home Office to produce evidence of the check they carried out regarding the employment or self-employment of the appellant's spouse.
 13. The judge erred in determining there was little by way of acceptable documentation to show a durable relationship and did not give enough weight to the documentation produced.
 14. The judge erred in suggesting that the tenancy agreement was not in the appropriate form and it was not set out what appropriate form really meant.
 15. Permission to appeal was granted by First-tier Tribunal Osborne on the basis that it was arguable the judge's findings were not supported by adequate reasons and the documentary evidence was not adequately considered by the judge.

The Hearing

16. At the hearing Mr Iqbal pointed out that the judge had mistakenly considered that Regulation 17(1) instead of 17(4) of the EEA Regulations applied. Mr Iqbal relied on

the written permission to appeal application. He looked through the tenancy agreement and there was no reference to any deposit and such tenancy agreement would be valid.

17. Secondly, in relation to the treaty rights, the interagency checks were not disclosed in accordance with **MH (Respondent's bundle: documents not provided) Pakistan [2010] UKUT 168** (IAC) and if the respondent referred to and relied on that document it should be disclosed.
18. Mr Tufan agreed that the findings of the judge were not extensive but he considered that they were sufficient.
19. I found that there was an error of law in the determination. The judge had not engaged with the evidence which ran to 163 pages and even if all of that evidence were not relevant the judge should have addressed the relevant evidence which related to independent documentation relating to co-habitation.
20. Further, there was no finding as to whether the EEA national was in fact exercising treaty rights.
21. Mr Iqbal and Mr Tufan were content to proceed on the basis of the documentary evidence available to me and Mr Tufan made no objection to the production of further documentary evidence at the hearing which, although was not in accordance with Rule 15(2) of the Upper Tribunal Procedure Rules was admitted. I note that directions were sent out by the Tribunal on 5 August 2015 directing the parties to file with the Tribunal and serve upon the other party any documentary evidence on which it was relied even if that had been previously served. A reminder of that direction was issued on 27 August 2015 following a refusal to adjourn the hearing of 7 September 2015 on the basis that the appellant's spouse had left the country. The parties were reminded that any further documentary statements could be served and stand as evidence-in-chief. I therefore proceeded on the basis of the evidence before me.
22. Ms Oshodin attended court and adopted her statement. Under cross-examination she first stated that just she and her partner lived at 42 [-] and then stated someone called Ahmadi did stay there from a month ago (the hearing was 7th September 2015). When challenged by Mr Tufan, she stated that in fact Ahmadi was her sister and arrived in February 2015 and left on 15 August 2015, therefore she *left* a month ago.
23. Mr Tufan made mention of an Immigration Officer's visit to the property when only her older sister was there. The appellant asserted that her sister in when her partner was not there. The appellant confirmed that she was aware that the EEA national sponsor had made a previous application for a residence certificate which had been refused and that there was no appeal.
24. She confirmed the partner was now self-employed as a barber and had paid tax of £20 on 6 September 2015 which was yesterday. The full amount due was £212 and the last date it was due was in January 2016 but they thought they would get it out of the way. She stated that this was arrears. She confirmed her partner earned £800 per month. He worked house to house and the business was advertised by word of

mouth. Mr Tufan submitted that the signature of the sponsor was different on the application and the tenancy agreement.

25. She was asked whether there was a tax return and she stated that it was made on line but she forgot to print it out. She confirmed on a re-examination that she had seen her partner submit tax returns and she was beside him and she confirmed that he submitted his tax return in February 2015 for the period 2014 to 2015. She confirmed that her partner made the national insurance contributions to the bank. She also confirmed that she was aware that the tax year started and ended in April.
26. Mr Tufan made submissions that the appellant had changed her evidence. Her evidence was discrepant and she was not in a durable relationship. There was inadequate evidence of him staying there. There was no council tax being paid.
27. Secondly, there was no evidence that he was in fact exercising treaty rights and no evidence of earnings having gone into a bank account.
28. The appellant confirmed that the last time the sponsor had contacted her was on 1 August because there were difficulties with the internet.
29. Mr Iqbal made submissions that the appellant was in a durable relationship and mentioned that the sister came and went which was not unusual. The doubt about the visit was not reflected in the reasons for refusal letter but Mr Tufan pointed out that this was because the visit was dated 22 September 2014 which post-dated the reasons for refusal. Mr Iqbal submitted that the appellant was expressive and not evasive. She said that she had sent her originals to the Home Office. A landlord's statement was not produced or required and no interagency checks of the evidential material was produced. There was a recent payment to HMRC which gave support to the fact that the sponsor was exercising treaty rights.

Conclusions

30. As I found an error of law I proceeded to determine the two issues which were live in this case, the first being whether there was a durable relationship and the second was whether the sponsor was exercising treaty rights.
31. There is no doubt that the documentation places both the appellant and the EEA national at 42 [-], DA8 [-]. I can also see that there are on file a tenancy agreements dated 2 January 2012 between Rob Williams and the appellant and the sponsor and also one dated 29 October 2012 between Collins Roberts and the sponsor and appellant,
32. The question is whether there is a genuine and subsisting relationship between the appellant and the sponsor and I do not accept that there is. I found the appellant's evidence to be evasive and shifting. When she was first asked under cross examination whether anyone else lived at the property with her she stated that it was just her and her partner. It then transpired that the sister had been staying with her and she stated that her sister came to stay with her when the appellant's sponsor was not there. At first she stated that her sister came in August. Then the appellant stated, when challenged and during cross-examination, that her sister had in fact come between February and August and then when it was put to the appellant that

there had been an immigration office check in September 2014 that the sister had answered the door, the appellant asserted that the sister stayed 'on and off'. I make no mention of the question as to whether the EEA national lived there but I do find that this shows that the appellant's evidence was contradictory. I find that in fact the sister lives with the appellant which leads me to find that the appellant was not candid about who lived there and not candid about her relationship with the EEA national.

33. The only statement given by the EEA national was a short five paragraph statement sworn on 2 March 2015 merely stating that he had been living with the appellant in a relationship akin to marriage for two years and that "I confirm that we love each other and are planning on getting married soon and starting a family".
34. If that were the case and he knew that his partner's immigration status was in jeopardy I do not accept that he would leave for Nairobi on 1 August (permission to appeal was granted on 21 May 2015) and secondly, that even if he had to go to Nairobi that he would not have submitted a further statement rather than the bare assertions and formulaic statement he submitted.
35. Thirdly, the appellant during her evidence stated that she last heard from her claimed partner *before* he went to Nairobi and that they had not been in contact because the internet was poor. As pointed out in the reasons for refusing the adjournment, the Air France ticket was not clear as to the date of departure and the appellant could not produce any further evidence of her claimed partner's travels. If she were truly in a romantic relationship with this man I do not accept that he would leave the country for this length of time without offering her further assistance and support and would not have been in any form of contact with her since the start of August.
36. I do note that the appellant would appear to have access to the EEA sponsor's tax documentation and his UTR number and that there was a notice to complete a tax return from HMRC dated 6 April 2015 to the appellant's sponsor. That said, *no tax return was produced*. The appellant stated that she was with the sponsor when he filled in the tax return on line but she forgot to print it out. She claims that the tax due was £212. The fact is that the appellant also claimed that the tax return was made in February 2015. As the tax year does not close until April 2015, a fact that she was aware of, I do not accept her evidence that she was with him when he made the tax return as the dates for returns are adrift. I find that there is insufficient evidence to show that the sponsor is currently self-employed. There were no invoices. I considered the bank statements and it was clear that the payments made into the Barclays joint account in August were deposited by Ms Oshodin, at least they derived from her account.
37. I take note that the appellant and her sponsor did have a joint bank account together but from the evidence supplied to me it is clear that as from 17 September 2014 Barclays Bank *closed* both accounts of the appellant and the joint account of the appellant and the sponsor. These accounts were therefore closed on 17 September 2014. What might have seemed to have evidenced a relationship between the appellant and sponsor clearly no longer existed.

38. I am not persuaded that the national insurance contributions made on 5 May 2015 are evidence that the appellant's sponsor made those payments.
39. I have reviewed all of the documentary evidence provided and in the context of the oral evidence. There are features which suggest that the sponsor is not longer conducting his own affairs at that address. The account from Vodaphone in October 2014 showed that there was an outstanding debt in the Sponsor's name. His bank account with Barclays was closed in September 2014. As the appellant confirmed she had access to his very limited tax affairs and the sponsor's documents, I conclude that she was able to pay the utility bills as she paid his tax bill. In 2014 the Sky account was in the Sponsor's name but by 14th August 2014 the account was in the appellant's name. From the Lloyd's Bank account I can accept that the appellant does live at 42 [-], and the sponsor has also been identified as having lived there in the past, but bearing in mind the very limited extent and the nature of the documentary evidence provided, I do not find this shows him to be exercising treaty rights. I do not accept that they are in an intimate relationship. Indeed he is not even in the country and on this aspect of the case I comment above and enlist those findings here. It is clear that the appellant has access to the sponsor's documentation and I am not persuaded that he has himself paid the bills to the HMRC.
40. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007
41. I therefore dismiss the appeal.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Rimington

Date 12th October 2015

TO THE RESPONDENT
FEE AWARD

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

Signed
Deputy Upper Tribunal Judge Rimington

Date