



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

Appeal Numbers: IA/45715/2013  
IA/45720/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**On: 19<sup>th</sup> December 2014**

**Determination  
Promulgated**

**On 10<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Sebrina Sylvana Visser  
Olubunmi Afolarin Omole**

Respondents

**Representation:**

**For the Appellant: Mr Harrison, Senior Home Office Presenting Officer**

**For the Respondents: Mr Edwards, London Investigation**

**DETERMINATION AND REASONS**

1. The Respondents are an EEA national and her Nigerian partner. On the 12<sup>th</sup> March 2014 the First-tier Tribunal (Judge Mensah) allowed their linked appeals against a decision to refuse to issue them with confirmation of their right of residence in the UK in accordance with the Immigration (EEA) Regulations 2006. The Secretary of State

now has permission to appeal against that decision<sup>1</sup>.

2. The Secretary of State had refused to issue residence permits because she was not satisfied that Ms Visser was exercising treaty rights, or that the couple were properly married, or indeed in a durable relationship.
3. Judge Mensah heard live evidence about the nature of the relationship and having regard to the documentary evidence before her, accepted on a balance of probabilities that Ms Visser and Mr Omole were cohabiting and were in a durable relationship. She found that Mr Omole was an extended family member within the meaning of Regulation 8 and allowed the appeals.
4. The Secretary of State appealed on the grounds that the First-tier Tribunal had failed to make any findings on the first matter in issue, namely whether Ms Visser was exercising treaty rights.
5. On the 7<sup>th</sup> July 2014 I heard submissions on this matter. I agreed that the First-tier Tribunal appeared to have overlooked the issue as to whether Ms Visser was working and found there to be an error of law in that omission. Before me Ms Visser provided a bundle of original documentary evidence about her work in the UK. It included correspondence with HMRC, a P45, a P60, payslips and confirmation that she had been paying Class 2 National Insurance contributions. The Secretary of State was that day represented by a Ms Johnstone, who applied for an adjournment on the grounds that the Secretary of State had not seen any of this material before and that she wish to conduct verification checks with the HMRC.
6. I agreed to adjourn the re-making of the appeal and on the 19<sup>th</sup> December 2014 the matter came back before me. Mr Harrison informed the Tribunal, with apologies, that nothing had in fact been done since July and that the verification checks considered so important by Ms Johnstone had not been conducted.
7. I have seen the original material supplied by Ms Visser. I see no reason to reject it as not genuine. I note that it remains open to the Secretary of State to conduct verification checks if she should wish to, and she may well do that in the course of considering whether to issue a residence card to Mr Omole in accordance with regulation 17(4)(b).

## **Decisions**

8. I was not asked to make any direction for anonymity and I see no reason to make one.

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<sup>1</sup> Permission granted by Designated Judge of the First-tier Tribunal McClure on the 16<sup>th</sup> April 2014

9. The determination of the First-tier Tribunal contains an error of law and it is set aside save for the findings on Mr Omole and Ms Visser's relationship which are unchallenged and preserved.
10. I re-make the decisions as follows:
  - i) I am satisfied that Ms Visser is exercising treaty rights in the UK as a worker and her appeal is allowed
  - ii) The First-tier Tribunal has found as fact that Mr Omole is an extended family member under Regulation 8. The matter is now remitted to the Secretary of State to exercise her discretion under Regulation 17(4)(b).

Deputy Upper Tribunal Judge Bruce  
16<sup>th</sup> February 2015