



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

Appeal Number: IA/43195/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th October 2018**

**Decision & Reasons Promulgated
On 25th October 2018**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ADEBUNMI IRETIOLA ONANUGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Okunowo, Solicitor

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

DECISION AND REASONS

1. The Appellant appealed against the decision of First-tier Tribunal Judge Oliver promulgated on 9 May 2017, in which the Appellant's appeal against the decision to refuse her application for an EEA Residence Card as the family member of an EEA national exercising treaty rights in the United Kingdom dated 14 November 2014 was dismissed.
2. I found an error of law in Judge Oliver's decision promulgated on 9 May 2017 following the first hearing of this appeal on 6 August 2018. The background to this appeal is set out in the error of law decision contained

in the annex and will not be repeated here save where reference to the background facts is needed. This decision is the re-making of the appeal.

The appeal

Applicable law

3. Pursuant to Regulation 17 of the Immigration (European Economic Area) Regulations 2006 (the “EEA Regulations”), an extended family member of an EEA national exercising treaty rights in the United Kingdom, as defined in Regulation 8 of the same, may be issued with a Residence Card.
4. Regulation 8 of the EEA Regulations provides for ‘extended family members’ as follows:

“(1) In these Regulations ‘extended family member’ means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

...

(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.”

Explanation for refusal

5. In the decision letter dated 14 November 2014, the Respondent considered the Appellant’s claim to be in a relationship with an Italian national (the “Sponsor”) exercising treaty rights in the United Kingdom. The Respondent referred to an unannounced visit to the Appellant’s home address where it was noted that person(s) were present in the premises but refused to open to the door to immigration officers. The Respondent considered that either the address provided was not the Appellant’s address, or there was a refusal to open to the door to immigration officers.
6. Further to the attempted visit, the Respondent invited the Appellant and the Sponsor to a marriage interview (although the Appellant has never claimed to be married) on 4 November 2014 to verify the authenticity of the relationship. The Respondent considered that there was a litany of discrepancies between the answers given by the Appellant and the Sponsor and a view taken as a result that the relationship was solely for the purpose of facilitating the Appellant’s stay in the United Kingdom. After the interview, the Sponsor admitted to immigration officers that the relationship was not genuine and it was solely for immigration purposes to help a friend. On this basis, the application was refused as the relationship was found to be an unmarried relationship of convenience for the sole purpose of the Appellant remaining in the United Kingdom.

The Appeal

7. The Appellant appeals essentially on the basis that she is in a genuine and subsisting relationship with the Sponsor.

The Written Statements

8. In her written statement which was signed but undated, the Appellant set out her immigration history and that she met the Sponsor in late 2009 or early 2010 and started their relationship towards the second half of 2010. The couple have cohabited since 2011.
9. The Appellant takes issue with the Respondent's repeated references to marriage and a sham marriage in the refusal letter when she has never claimed to be married, only to be in a relationship.
10. As to the interview on 4 November 2014, the Appellant states that towards the end of her own interview, the interviewer left and came back within 2 minutes with immigration officers who arrested and detained her for being involved in a sham marriage, which was outside the remit of the interview. Whilst in detention, the Appellant was informed that the Sponsor had confessed it was a sham marriage which is totally untrue. The Sponsor could not have said this because there was no marriage and because their relationship was genuine.
11. The interview record was not signed by the Appellant nor given to her at the time. It has now been served but noted that it was not signed by the interviewing officer. The Appellant states that most of the answers given were similar and the interview supports the existence of the relationship. Particular reference is made to the answer to question 5 being incorrect as to when the relationship started.
12. The Appellant states that following the interview, her arrest and detention, the couple were exposed to ferocious hostility from family members who did not approve of their same sex relationship. The Sponsor's mother threatened to report the Appellant to the Nigerian authorities and the Appellant's family, including her brothers, deserted her. The exposure of their relationship also did not go down well with the Church that they have since left.
13. The Appellant and the Sponsor are now forced to meet secretly because of the reaction to their relationship and this is why the Sponsor is not attending the appeal hearing.

The Oral Evidence

14. The Appellant attended the oral hearing, adopted her written statement and gave oral evidence in English. She stated that she last saw her partner some days ago and although she was aware of the appeal hearing, she could not be involved because her mother would not let her. The Sponsor's mother does not approve of the relationship and threatened to

report the Appellant to the Nigerian authorities if the relationship continued or the Sponsor supported the appeal.

15. The Appellant maintained that she was in a genuine and subsisting relationship with the Sponsor who was currently working in Greggs in Camden.
16. In cross-examination, the Appellant stated that the Sponsor no longer lives with her, she has moved back with her parents to care for them. They lived together until about a year and a half ago, although after the interview their cohabitation was on and off because of the family difficulties and that the Sponsor could not admit she was staying with the Appellant.
17. The Sponsor's mother was said not to be coping with discovering her daughter's sexuality in addition to her son being gay. The Sponsor was always honest and her mother checks things so it would not be possible for the Sponsor to support the Appellant in this appeal because of her mother whose needs come first.
18. The Appellant was asked why there was no evidence of the relationship said to have been existing for 8 years or any evidence of cohabitation. She stated that she had taken photos, bills and so on to her marriage interview but not provided them to the Tribunal on an assumption that everything would be on file.
19. With reference to the answers to question 13 of the interview in 2014, whereby it was recorded that both the Appellant and Sponsor stated that the Sponsor's parents knew that they were a couple; the Appellant stated that that was incorrect and they did not know what the lady in interview was typing but thought just recorded what she wanted. Numerous errors in the interview were claimed but the Appellant had only addressed the mistakes raised by the Home Office.
20. The Appellant had not asked her brother or any friends to make a statement or come to the Tribunal to support her claim because she didn't know this was needed.

Closing submissions

21. In closing on behalf of the Respondent, Mr Wilding relied on the reasons for refusal letter and made submissions on the current circumstances. It was submitted that the burden of proof of establishing a durable relationship with an EEA national was on the Appellant and she had failed to provide any credible evidence of a relationship at all. In these circumstances the Respondent did not need to go further and show that the relationship was a sham.
22. The Respondent relies on the interview record which contained a large number of differences in the answers given by the Appellant and the Sponsor as well as the Sponsor's confession that this was not a genuine

relationship. In any event, there is no evidence at all from the Sponsor as to the relationship or to dispute the confession made to the Respondent. The lack of evidence is all the more peculiar given the claimed length of relationship and time since the interview. The Appellant's statement and evidence gave very little detail of the relationship.

23. The reason given by the Appellant for the lack of support from the Sponsor for her appeal is inconsistent with both of their answers in interview in 2014 that the Sponsor's parents knew of their relationship. The Appellant had not previously challenged the accuracy of the transcript on this point and only did so when asked about it in cross-examination.
24. There was also a striking absence of any other evidence as to the relationship, from the Appellant's brother whom the couple previously lived with or from any friends. The only documentary evidence is that submitted with the initial application, none of which addresses the interview or confession and none post-dates 2014. In any event that evidence did not at the time, nor does it now corroborate the existence of a relationship.
25. Overall it was submitted that the Appellant was not credible and there was nothing to support the claim of a relationship at all with the Sponsor. Further, there is no evidence that the Sponsor is a qualified person exercising treaty rights in the United Kingdom.
26. On behalf of the Appellant, it was accepted that there was a paucity of evidence as to the claimed relationship but I was invited to find the Appellant to be a credible witness who had given an explanation as to why up to date evidence and evidence from the Sponsor could not be obtained for this hearing. Reliance was placed on mistakes made by the Respondent (eg references to a marriage when there as none) and the lack of detailed evidence or a signed confession from the Sponsor and insufficient evidence of the unannounced home visit by the Respondent.

Findings and reasons

27. There is no legitimate basis upon which the Appellant's appeal could be allowed on the facts and evidence before this Tribunal. There is an almost complete lack of evidence of the existence of any relationship at all with the Sponsor as claimed; nothing that post-dates 2014 and in any event no evidence at all that the Sponsor is even in the United Kingdom at present, let alone exercising treaty rights here.
28. The Appellant's explanation for the lack of any evidence at all from her Sponsor, either directly (through any written statement or attendance at the hearing) or indirectly (through any documentary evidence in relation to her or the relationship) is wholly incredible, particularly taking into account the lack of any other supporting evidence. The explanation given contained a number of inconsistencies.

29. First, in interview, both the Appellant and Sponsor are recorded as saying at question 13 that the Sponsor's parents knew of the relationship when part of her explanation for the Sponsor's absence was the difficulties caused when the relationship was discovered after interview. The Appellant has taken issue with other parts of the interview record previously but not this answer and only did so when challenged on the inconsistency in cross-examination. The Appellant is legally represented and prepared a written statement in advance of the hearing that dealt with another aspect of the interview record and it lacks credibility that she omitted to deal with a claimed error in response to this question just because the Respondent had not mentioned this particular point previously. In addition, the Appellant's solicitor confirmed that there has never been a request to the Respondent for the interview tape against which to check the transcript and no complaint about its accuracy raised with the Respondent.
30. Secondly, the Appellant stated that the Sponsor's mother had threatened to report her to the Nigerian authorities if the relationship continued or if the Sponsor supported the appeal. In oral evidence, the Appellant stated that the Sponsor was always honest with her mother so she would be unable to even write a letter of support. That approach is inconsistent with the Sponsor not previously being honest with her mother about her sexuality or in continuing the relationship as claimed.
31. Even if I had accepted the Appellant's explanation for the lack of any evidence from the Sponsor, there was no credible explanation as to the lack of evidence from any other sources, including herself. There was nothing submitted of the sort that you could reasonably expect to be readily available to a person claiming to be in a relationship for eight years - no photographs (even pre-dating the interview in 2014), no greetings cards, no tokens of affection, no phone records, no joint bills (only a joint tenancy agreement for six months in 2014 which at its highest shows they lived in the same property but not that they were cohabiting as a couple) and so on. The evidence given by the Appellant gave only the most basic of details of the relationship as to the year in which they met, started their relationship and cohabited.
32. The Appellant's bundle submitted the day before the hearing did contain a number of photographs which were entirely unexplained (in her written statement or in oral evidence). There was no identification of the people in the photographs, the events at which they were taken or how in any event they supported the Appellant's claim to be in a relationship with the Sponsor. These are not supporting evidence of the claimed relationship.
33. There was also no evidence from any friends or the Appellant's family, in particular, her brother whom she states the couple lived with on two separate occasions.
34. The Appellant's reliance on the similarity of answers given in interview in 2014 between her and her Sponsor as evidence of their relationship is

wholly inadequate given the discrepancies which were also contained therein and the subsequent events and intervening period. The limited evidence submitted with her original application did not support the existence of the claimed relationship and is now more than four years old.

35. The Appellant's appeal was heard twice in the First-tier Tribunal and again for re-making before me in the Upper Tribunal. Recent decisions have referred to the paucity of evidence on file and there is nothing to suggest the Appellant or her legal representatives have not been served with the Respondent's bundle to know the contents of it and that it doesn't include any of the material she stated in oral evidence was taken to the interview in 2014. In any event, there is nothing at all covering the last four years and it lacks credibility to claim an unawareness that any evidence was needed. It is for the Appellant to establish her claim and in this case she has failed to establish that she is, or ever has been, in a relationship at all with the Sponsor and in any event has failed to establish that the Sponsor is exercising treaty rights in the United Kingdom. I find the Appellant to be wholly lacking in credibility.

Notice of Decision

For the reasons given in my decision promulgated on 10 September 2018, the making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it was necessary to set aside the decision.

The decision of the First-tier Tribunal is set aside and re-made as follows:

Appeal dismissed under the Immigration (European Economic Area) Regulations 2016.

No anonymity direction is made.

Signed
2018



Date 19th October

Upper Tribunal Judge Jackson

ANNEX



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

Appeal Number: IA/43195/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th August 2018**

Decision & Reasons Promulgated

.....

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ADEBUNMI IRETIOLA ONANUGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Okunowo, Solicitor

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Oliver promulgated on 9 May 2017, in which the Appellant's appeal against the decision to refuse her application for an EEA Residence Card as the family member of an EEA national exercising treaty rights in the United Kingdom dated 14 November 2014 was dismissed.

2. The Appellant is a national of Nigeria, born on 6 March 1981, who applied for an EEA Residence Card on 14 May 2014 on the basis that she was in a genuine relationship with an Italian national, exercising treaty rights in the United Kingdom.
3. The Respondent refused the application on 14 November 2014 on the basis that it was not accepted that the Appellant was in a genuine and subsisting relationship, that the claim to be in any such relationship was a sham and therefore the application was refused under Regulation 17(4)(b) of the Immigration (European Economic Area) Regulations 2006. The reasons given included that an unannounced visit was made to the Applicant's address, with an indication of persons inside but no one opened the door. From this the Respondent considered two possible alternatives, first that the address provided was not actually the address of the Appellant and/or her EEA national sponsor; or, secondly either the Applicant and/or her EEA national sponsor were at the address but refused to answer the door. Following this the Respondent invited both to a marriage interview to verify the authenticity of their relationship, which was conducted on 4 November 2014. The Respondent considered that there were a 'litany of discrepancies' in the answers given in interview regarding the circumstances of their claimed relationship and considered the claim to be one made solely for the purpose of facilitating the Appellant's stay in the United Kingdom. During what the Respondent describes as a debrief with the Appellant and the EEA national sponsor, the sponsor told enforcement officers that the relationship was not genuine and was purely for immigration purposes. She stated that she had only agreed to adopt the facade to help out a friend and no financial gain was received from the arrangement.
4. The Appellant's appeal against refusal first came before the First-tier Tribunal in 2015 and was dismissed in a decision promulgated on 22 October 2015. That decision was set aside by the Upper Tribunal on 28 August 2016 and remitted for a fresh hearing.
5. Judge Oliver dismissed the appeal in a decision promulgated on 9 May 2017 on the basis that there was a lack of evidence from the Appellant's claimed partner and no reasonable explanation for the lack of such evidence. On the whole it was found that there was insufficient evidence of a genuine relationship.

The appeal

6. The Appellant appeals on the grounds that the decision was incorrectly based on her having entered a sham marriage/civil partnership, but she had never made any claim to be married; that she had given evidence as to her relationship as well as an explanation for the absence of her partner at the appeal hearing which had not been properly taken into account by the First-tier Tribunal. In addition, the Appellant relied on the absence of any signed statement from the Respondent as to her partner's alleged

confession about the lack of genuineness of her relationship and that this was not taken into account by the First-tier Tribunal either.

7. Permission to appeal was granted by Judge Osborne on 30 May 2018 on all grounds.
8. At the oral hearing, it was submitted on behalf of the Appellant that the First-tier Tribunal's decision lacked clarity and it was not expressly clear what evidence was accepted and what was rejected. The Respondent had relied heavily upon a claimed immigration visit to the Appellant's address but there was a distinct lack of evidence of this visit and no signed statement in relation to it. None of the allegations in relation to this visit were put to the Appellant when she was later interviewed. There was also no statement as to the confession claimed to have been made by the EEA national from the Respondent and the Appellant has denied, with reasons, why this did not happen. These points were not properly considered by the First-tier Tribunal, who proceeded on the incorrect footing that this was a sham marriage when there has never been any claim of a marriage or civil partnership and the lack of consideration of these points and lack of clear reasons were material because there was some evidence of the claimed relationship, including relatively consistent answers being given in the marriage interview.
9. On behalf of the Respondent, Mr Tarlow expressed concern about the lack of reasoning in the decision of the First-tier Tribunal and although he noted a distinct lack of evidence as to the relationship claimed before the First-tier Tribunal, he accepted that there were inadequate reasons given to dismiss the appeal.

Findings and reasons

10. The First-tier Tribunal's decision is relatively brief with the oral evidence being set out in paragraphs 8 to 10 and the totality of findings made in paragraphs 12 to 14 which states as follows:

"12. The answers that the appellant and her claimed partner gave an interview do not reveal the wide discrepancies claimed by the respondent, but the explanation for the correspondence in the answers may lie simply the fact that they have lived together and have been close friends. Questions and answers are poorly set out in the record.

13. I do, however, find that the immigration officers report of the admission made by the appellant's friend is unchallenged in the absence even of a witness statement from the friend. I do not accept that the claimed partner had any reason to fear the consequences of giving evidence at the hearing or at least making such a statement. The partner was given 30 days to leave the United Kingdom but is still here according to the appellant.

14. In the event the appellant has failed to show that she is in a relationship with her claimed partner. There are no exceptional circumstances wanting consideration outside the rules."

11. It was entirely appropriate in the circumstances of this appeal for Mr Tarlow to accept that there was a lack of adequate reasoning given in the decision of the First-tier Tribunal. As can be seen from the paragraphs quoted above, which are the entirety of the so called findings on which the appeal was dismissed, no clear or adequate reasons were given for the finding that there was no relationship as claimed. Paragraph 12 undermines the Respondent's initial reasons for refusal based on discrepancies in the interview and in fact is a finding in the Appellant's favour. Paragraph 13 is not entirely accurate given that the Appellant challenged the immigration officers report of the admission, although it is not in dispute that there was no evidence directly from the EEA national and there is a rejection of the explanation given for the lack of such evidence. The relevance or otherwise of the EEA national being given 30 days to leave the United Kingdom stated at the end of this paragraph is not at all clear and it does not seem to be expressly relevant to the question of the relationship. Paragraph 14 contains no further reasons on only states the conclusion. It is not sufficiently clear from these paragraphs why the appeal was dismissed and what evidence in particular was accepted or rejected.
12. In spite of the distinct lack of evidence from the Appellant of her claimed relationship before the First-tier Tribunal, I accept that there was a material error of law in the First-tier Tribunal's decision for the reasons set out above and accepted by the Respondent, such that it is necessary to set it aside.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

No anonymity direction is made.

Directions

The Appellant and the Respondent are at liberty to file and serve any further evidence that they wish to rely on, no later than 14 days before the relisted hearing - by 4pm on 4 October 2018.

The re-making of the appeal is listed at 10am on 18 October 2018 before UTJ Jackson.

Signed 
September 2018

Date 3rd

Upper Tribunal Judge Jackson