



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/05109/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Determination Promulgated
On 21 November 2014**

Before

DESIGNATED JUDGE MURRAY

Between

**AHMAD WALLA BASSEL MOHAMAD ABUANZEH
(ANONYMITTY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Asanovic, Counsel for VC Legal UK

For the Respondent: Mr Tony Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Jordan born on 11 August 1981. He appealed the respondent's decision of 19 January 2014 refusing his application for a residence card for the UK as a spouse of an EEA national under Regulation 8(5) of the EEA Regulations 2006. His appeal was heard by Judge of the First-tier Tribunal Khan on 18 July 2014. The appeal was dismissed in a determination promulgated on 30 July 2014.
2. An application for permission to appeal was lodged and permission was refused by Judge of the First-tier Tribunal

Shimmin on 18 August 2014. However, permission was granted by Judge of the Upper Tribunal Reeds on 19 September 2014. She found that it is arguable that the judge may have reached his findings on durability of the relationship by misunderstanding part of the evidence and by failing to consider the evidence of Mr Halawa which was discounted on the basis of what was perceived to be a discrepancy and for failing to consider other evidence in the appellant's bundle. The permission states that when the judge found that the appellant's partner was not exercising her Treaty rights it is arguable that he did not consider all the evidence provided, in particular the original documents as there were original documents apart from the evidence of national insurance contributions being paid.

3. The Rule 24 response from the respondent states that the judge made various adverse findings relating to the lack of evidence about the durability of the appellant's relationship with his EEA spouse and that the grounds have no merit. It states that the judge's conclusion was open to him based on the evidence, under the Rules and on the balance of probabilities.

The Hearing

4. The appellant's representative submitted that the judge's conclusions are in paragraphs 30-37 of his determination. The durable relationship question is dealt with at paragraphs 32 and 33.
5. She submitted that the judge states that the appellant's and his partner's evidence was vague and evasive but he has not specified why he found this. He has set out their evidence at paragraphs 19-28 of the determination. He found inconsistencies relating to the address 25A Grand Parade and whether it was a residential or a business address. He found that Mr Halawa's evidence about the appellant's and his partner's relationship does not assist the court when their own evidence about their cohabitation is inconsistent and contradictory. He found that the appellant and his partner are not in a durable relationship. Counsel submitted that the determination contains general assertions and the issue of the business address. She submitted that Mr Halawa's evidence was important and was not properly considered. This man used to share a house with the appellant and they both moved into 2 separate flats to live with their partners.
6. Counsel referred me to the grounds of application and submitted that the judge misunderstood the appellant's partner's evidence about her business address. The judge states that she contradicted herself as to whether she was living at 25A Grand Parade or that was her business address

and because of this misunderstanding the judge found that the couple had not lived together from August/September 2012. She quoted the record of proceedings submitting that the appellant's partner appears to have said that 25A Grand Parade was her business address and she was living there.

7. The appellant's partner also said that she was renting rooms at Charterhouse for her beauty therapy job and Counsel submitted that this was not a defect in her evidence, this was something that the judge had misunderstood.
8. She submitted that there is a lot of evidence showing that the appellant and his partner are planning to marry, being photographs, letters and other correspondence, all sent to the couple's address. She submitted that there are no joint bills and there is no joint tenancy agreement but there is a lot of other evidence which shows that they stay together. She submitted that durability has not been properly dealt with by the judge.
9. With regard to the appellant's partner exercising her Treaty rights, I was referred to paragraphs 34 and 35 of the determination. Counsel submitted that the judge's objection was that there were no original letters about the appellant's partner paying national insurance. I was referred to the printouts of tax return forms by the appellant's partner and Counsel submitted that it has been accepted that the tax returns are genuine so the fact that there are no letters from national insurance does not matter as the tax returns have the national insurance number on them. Page 53 of the appellant's first bundle refers to an overpayment of tax and Counsel submitted that the fact that the appellant's partner is only earning a moderate sum from her self employment does not mean that she is not exercising her Treaty rights. Evidence was given of her business with explanations of why her earnings were low.
10. Counsel submitted that the judge stated that only small sums were paid in and out of the appellant's bank account and that this does not support her evidence of being self employed. Counsel submitted that there are only small sums because of her very low income. I was asked to consider the bank statements and note that the appellant's partner uses PayPal and often gets paid in cash.
11. Counsel referred to the documents about the appellant's partner's work in Hungary. These documents were not translated. She submitted that the appellant's partner explained what these documents were about and this supports the other evidence of the EEA national's business.

12. Counsel submitted that the judge has made a fundamentally flawed decision. He has not assessed the evidence in the round and has given no weight to documents which have not been disputed. She submitted that this appeal should be remitted back to the First-tier Tribunal.
13. I asked Counsel about the HMRC documents and pointed out that these consist of tax returns sent in to HMRC by the appellant but there is nothing official from HMRC apart from reminder letters advising her to complete a 2011 tax return and general letters about her application to set up her business. Counsel referred to documents which the appellant's partner had sent to HMRC and asked me to note that the NI number on these documents is the same as the NI number on the copy letters which were before the judge. I pointed out that the copy NI letters, as they were presented to me, have post office receipts on them which cover the address. The HMRC letters and NI letters are unsatisfactory as a means of assessing whether the appellant's partner is exercising her Treaty rights. It is clear that the judge found them to be unsatisfactory. This is reflected in him giving little weight to the copy national insurance letters.
14. The Presenting Officer submitted that he is relying on the Rule 24 response. He submitted that the judge was entitled to assess the evidence before him and it is not an error to refer to evidence as vague and evasive. He had the advantage of hearing the appellant's, his partner's and Mr Halawa's evidence in person and the judge has assessed the evidence and has explained his reasons for dismissing the appeal. With regard to the supposed misunderstanding about the appellant's partner's residential address, I was asked to consider the determination at paragraph 32. It is clear from this that the appellant's partner said that at the date of the application, 6 June 2013, she was living at 25A Grand Parade but did not operate her business from there. She then contradicted herself in re-examination stating that she did not live there but kept that as her business address. I have noted the grounds of application in which the appellant's partner seems to have stated that 25A Grand Parade was a business address and a residential address but based on her evidence in court the judge was right to find that the couple had not been living together from August/September 2012 as stated. It is clear why the judge came to this conclusion. I do not find that this was the judge misunderstanding the evidence.
15. The Presenting Officer submitted that with regard to the durability of the relationship the judge assessed the relationship on all the evidence that was before him. He does not require to refer specifically to every part of the evidence, all he has to do is consider it all.

16. He submitted that the judge correctly found that there was nothing in joint names of the appellant and his partner, although he was told that the relationship had been going on for 2 years. There were no joint bills, no joint bank account and no joint tenancy agreement.
17. I directed him to the tenancy agreement. This states that that address is only suitable for one person. The evidence is that the appellant's partner is staying with him there and also that his parents stayed there when they visited him. This is mentioned by the judge and clearly is a credibility issue.
18. The Presenting Officer submitted that relating to durability, based on the evidence it was open to the judge to make the findings he did.
19. With regard to the appellant's partner not exercising her Treaty rights, he submitted that the judge's refusal is based on the lack of necessary documents. There are no original national insurance documents. The appellant's partner must have these if she is in a legitimate business. On the copy documents the address is covered by credit card receipts for payments supposedly made by the appellant's partner. There are no credit card statements. Although there are tax returns on file, these are not sufficient to show that the appellant's partner is self employed or is exercising her Treaty rights.
20. He submitted that the appellant is a parasite on the EEA sponsor. He pointed out that the sponsor, who is supposedly running her own business in the United Kingdom, appears not to have applied for a residence card herself. He submitted that the evidence in 2011 from HMRC relates to a period before the appellant's relationship with his partner began.
21. The Presenting Officer asked me to find that there is no error of law in the judge's determination. The judge reached his decision because of the lack of appropriate evidence. He submitted that with regard to Mr Halawa's evidence, as the judge found the appellant and his partner not to be credible he found he could give little weight to Mr Halawa's evidence. The Presenting Officer submitted that it is a logical progression that if an appellant is not credible, no witness can make his application right.
22. I was asked to uphold the judge's decision.
23. Counsel for the appellant referred me to the HMRC letter at page 77 and the completed tax return which is supported by the appellant's partner's accountant's letter. She submitted that the judge did not query the tax documents, so on the face of it he accepted these and if that is the case no original documents should be required.

24. I asked Counsel if what she is saying is that the judge accepted that the appellant was paying tax because he did not actually dispute it in the determination. She said that is correct, the judge should have questioned the HMRC documents if he was not satisfied with them. Instead he made unspecified allegations and made no comment about whether he finds the appellant's partner has paid tax or is not telling the truth about this. She submitted that as this is not contested it is not in dispute. Counsel submitted that the appellant's partner does not require to submit another tax return until January 2015 and her last tax return is on file.
25. With regard to the bank statement Counsel submitted that there is sufficient evidence to show that the appellant's partner is working. We have copies of her bookings and her correspondence with clients but the judge has not given these weight. I asked if there are any tax payments out of her bank account but was told that the appellant's partner always paid by card. She submitted that that is clear from the HMRC documents on file. She submitted that the tax authorities now deal with their customers on line and there is evidence of the appellant's partner instructing her accountant. She pointed out that the letters to HMRC are all from the same address, apart from the first 2011 tax return. I was asked to consider the payment slips.
26. Counsel submitted that the Presenting Officer states that it was open to the judge to find as he did but determinations where no proper reasons are given have been severely criticised by the higher courts. She submitted that the judge has not given proper reasons in his determination. She submitted that the address 25A Grand Parade is on very few documents. The documents with this address are from 2011/2012.
27. With regard to Mr Halawa's evidence, Counsel submitted that his evidence must be assessed. The judge was wrong to say that his evidence does not assist just because he found the appellant and his partner not credible.
28. The Presenting Officer submitted that if the refusal letter does not challenge evidence, this does not mean that it is accepted. He submitted that the refusal letter makes it clear that the Secretary of State does not accept that the appellant's partner is exercising her Treaty rights and as the appellant is a parasite on her, his claim cannot succeed.
29. Counsel submitted that if matters are not raised in the determination the judge must be seen as accepting these matters. She submitted that there is no requirement for the appellant's partner to have a residence card.

Determination

30. I am first of all considering the durability of the appellant's relationship with his partner. At paragraph 32 the judge refers to the oral evidence from the appellant and his partner. He finds their evidence not to be credible. The judge was face to face with both of these parties. He found they were vague and evasive throughout their oral testimony. He refers to inconsistencies in the evidence, confusion about the addresses, in particular 25A Grand Parade and when I consider this paragraph along with the record of proceedings all I can say is that the appellant's partner's evidence was confusing.
31. The judge has noted that there is no joint tenancy agreement and there are no joint bills. He does not accept the explanations for this. He has noted the tenancy agreement states that the property which the appellant is living in is for one party only and yet he and his partner are both supposedly living there. There is no consent to this from the landlord. There are credibility issues because of this, particularly as when the appellant's parents visited him they stayed there during the visit.
32. With regard to Mr Hawala's evidence, it is clear from the determination that the judge did consider his evidence. He refers to it at paragraphs 27 and 33. He finds the appellant's and his partner's evidence to lack credibility as it is inconsistent. Mr Halawa, is a friend of the appellant so his evidence may well not be unbiased. There is no error in the judge stating that his evidence does not assist the court.
33. The judge has made his decision on the balance of probabilities. His reasons for finding there is no durable relationship are not based on one inconsistency. They are mainly based on the lack of evidence of them residing together. This is dealt with at paragraph 16. He has noted that there is no permission letter from the landlord for the appellant's partner to reside there. He has noted that the tenancy ends in July 2013 and is now on a monthly basis. The judge has clearly considered the photographs and he has noted that the appellant states that his parents stayed with him when they visited in May 2013. The judge has also referred in paragraph 21, to the fact that the appellant appears to know little about his partner's business or her income. He has noted the appellant's partner's evidence about her home address and her business address at paragraph 23 and at paragraph 25 he deals with her evidence about the address at 25A Grand Parade and gives reasons for finding there is an inconsistency.
34. There is no error of law in the judge's determination relating to the durability of the relationship. There is a lack of evidence and the evidence on file has been found not to be satisfactory.

35. With regard to the appellant's partner exercising Treaty rights, the judge found there was not sufficient evidence about this. He has considered all of the evidence before him. It is clear to me that the HMRC documents on file are not sufficient to show that Treaty rights are being exercised by the appellant's partner. There is a national insurance number on each of the tax documents but these are documents the appellant prepared herself or her accountant prepared, based on the evidence she gave him. At paragraph 34 the judge refers to her providing a lot of documents but he states that these documents do not show she has been engaged in any economic activity in the United Kingdom. The copy documents relating to national insurance have conveniently got photocopied receipts over her address. This must go to credibility. She does not pay her tax through her bank account. The judge has carefully considered the bank statements and has found that these do not show her claimed earnings. Based on the evidence before him the judge finds that the appellant's partner has not shown on the balance of probabilities that she is self employed as claimed. I do not accept Counsel's submissions that if the judge does not specifically refer to evidence which was before him, he must have accepted that evidence. He does not have to mention all the evidence before him and at paragraph 30 he states that he has taken all of the evidence into consideration before arriving at his decision. With regard to the appellant's work for ACA the judge could not take the evidence into account as it was in Hungarian with no translation. The letter relating to this employment which he was able to consider has no details of salary or payment arrangements thereon.
36. The evidence before the judge was not sufficient to show that there is a durable relationship or that the EEA national is exercising Treaty rights. The judge was correct to find that the requirements of Regulation 8 had not been satisfied and that the appellant is not entitled to a residence card.
37. I can give no weight to the submission that the appellant's partner has not applied for a residence card.

DECISION

38. There is no material error of law in the judge's determination and his determination, promulgated on 30 July 2014 must stand.

Signed
2014

Date **21 November**

Designated Judge Murray
Judge of the Upper Tribunal