



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

Appeal Number: IA/08816/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 5 November 2014**

**Determination issued  
on 7 November 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**UDDIN AMIN SYED**

Respondent

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer

For the Respondent: Mr M Shoaib, of Shoaib Associates

**DETERMINATION AND REASONS**

1. Parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by First-tier Tribunal Judge D'Ambrosio, allowing the appellant's appeal against refusal of a residence card under the Immigration (EEA) Regulations 2006.
3. Ground 1 is lack of reasoning for finding that the appellant and his partner were in a durable relationship.

4. Mr Matthews acknowledged that some reasons are given, but argued that they are seriously defective. Paragraphs 51 and 52 show that the appellant and his partner (Magdalena Dolomisiewicz) gave conflicting evidence about the periods they spent together in the UK and in Poland. The judge failed to explain how these discrepancies could be resolved. The appellant and his partner said that there is a child of their relationship. A birth certificate of Adam Dolomisiewicz, born in Lublin on 6 November 2011, identifies his mother as Magdalena Dolomisiewicz and his father as Amin Dolomisiewicz. The judge said that evidence from a Polish notary explained how the appellant's name might appear in that form, but the information from the notary contained nothing to that effect. There was no adequate explanation of how these serious shortcomings in the evidence could be overcome. At best the evidence did not justify a finding of a durable relationship. While there is no definition in the regulations the requirements of the rules form an accepted rule of thumb, two years cohabitation. The appellant and his partner had not lived together continuously for such a period. There was no evidence from the parents of the appellant, who would have been obvious witnesses. The determination should be set aside and remade according to the evidence, which fell short of proving a durable relationship.
5. Mr Shoaib submitted that paragraphs 37 - 56 contain a quite extensive consideration of the evidence. The relationship went back 7 years in all. Differences between the two parties over dates and times were immaterial. It was a sufficient reason at paragraph 37 to accept their evidence as truthful and reliable because they gave it in a candid and straightforward manner. Mr Shoaib acknowledged that the explanation for the father's name appearing as it does on the birth certificate is problematic, but there was evidence from the appellant and his partner that they are the child's parents. The child was present with them at the hearing in the First-tier Tribunal (and again in the Upper Tribunal). There were photographs of the parties together at different times and places. The evidence had to be looked at in the round. The standard of proof was the balance of probability, not beyond reasonable doubt.
6. I indicated that the appeal did not succeed on ground 1. Mr Matthews made sensible criticisms, disclosing some errors and inadequacies of reasoning. However, the judge was in the best position to assess the oral evidence. He was entitled to find the witnesses generally reliable, notwithstanding discrepancies over dates. They spoke in broadly similar terms to a relationship of 7 years which resulted in the birth of a child on 6 November 2011 and of living most recently together in Glasgow, either since 2011 or since October 2012. The determination says that the terms of the birth certificate are explained when they are not. That should have been found to be a mystery, but I think it is plain the judge would have come to the same overall view of the evidence. As a whole, the determination is an adequately reasoned explanation of why he decided as he did.

7. Alternatively, if remaking the decision, I would have found that the criticisms made of the evidence, although valid, still leave it more likely than not that the appellant and his partner are in a durable relationship of several years' standing.
8. Mr Shoaib accepted that Mr Matthews' submissions on ground 2, referring to regulation 17(4) and to *SY* [2006] UKAIT 00024, were sound. *SY* was decided under a previous set of regulations but the point remained a good one. The judge should have limited himself to the finding of a durable relationship and should not have held that the appellant was entitled to a residence card. The respondent has discretion under regulation 17(4) which has not yet been exercised. Parties agreed that in that light the outcome of these proceedings should be as follows.
9. The determination of the First-tier Tribunal is **set aside**. The appeal, as brought by the appellant to the First-tier Tribunal, is allowed on the ground that the respondent's decision was **not in accordance with the law**.
10. No anonymity direction has been requested or made.



5 November 2014  
Upper Tribunal Judge Macleman