



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/37484/2013**

THE IMMIGRATION ACTS

**Heard at Manchester
On August 21, 2014**

**Determination
Promulgated
On August 22, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS OMOYEMI KUDIRAT BANKOLE

Appellant

and

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

Respondent

Representation:

For the Appellant: Mr Atuegbe (Legal Representative)
For the Respondent: Mr McVeety (Home Office Presenting
Officer)

DETERMINATION AND REASONS

1. The appellant, born March 3, 1976, is a citizen of Nigeria. On January 11, 2013 she applied for a residence card based on her durable relationship with her partner, Charles Whyte.

2. The respondent refused her application on August 23, 2013 because she was not satisfied the parties were in a durable relationship.
3. On September 11, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
4. The matter was listed before Judge of the First-tier Tribunal Hillis (hereinafter referred to as “the FtTJ”) on March 12, 2014 and in a determination promulgated on March 25, 2013 he dismissed the appeal finding the appellant had failed to satisfy Regulation 8(5) of the 2006 Regulations. He also dismissed the appeal under the Immigration Rules and article 8 ECHR.
5. The appellant appealed that decision on April 2, 2014. Permission to appeal was refused by Judge of the First-tier Tribunal Robertson on May 7, 2014. Permission to appeal was renewed to the Upper Tribunal and on June 9, 2014 Upper Tribunal Judge Goldstein found it was arguable the FtTJ may have erred by failing to give adequate reasons for his findings on material matters.

PRELIMINARY ISSUES

6. I reviewed the FtTJ’s notes of the proceedings and I also considered the notes submitted with the grounds of appeal as well as asking Mr McVeety to check his notes. The record of proceedings kept by all parties indicated there had been no cross examination by the respondent’s representative about the matters raised in paragraphs [14] to [16] of the determination and there was no evidence the FtTJ had raised these issues during the hearing.
7. I invited Mr McVeety’s views on the application and he accepted the FtTJ appeared to have made findings on matters that neither he nor the respondent had raised as issues in the hearing.
8. Mr Atuegbe relied on his grounds of appeal and submitted the negative findings made were not issues either raised in the refusal letter or at the hearing. In the interests of fairness the FtTJ should have raised these issues if they were matters that concerned him and would affect his decision. His failure to do so

undermined his decision and amounted to an error in law.

ERROR OF LAW ASSESSMENT

9. The record of proceedings confirmed that the matters referred to in paragraphs [14] to [16] of the determination were not issues relied on by the respondent and the FtTJ had not raised them at the hearing. As these were important issues for the FtTJ I am satisfied he should have raised these points with the appellant and sponsor at the hearing. By failing to do so he acted unfairly and his findings are tainted.
10. I therefore set aside the decision.
11. Mr McVeety had no further representations to make. I raised with him whether he wished to pursue the matters identified in the paragraphs referred to above and he stated he did not wish to do so.
12. I was therefore left with the appellant's and sponsor's accounts that they had been living together since January 2012 along with their explanation for living apart prior to that date.
13. I accept the submission that the state of the appellant's previous marriage is irrelevant because this is not a spouse application. It is an application to remain as an unmarried partner and the only requirement is to show the relationship was durable. Over two years living together satisfied this test especially in light of the other evidence about financial support.

DECISION

14. There is a material error of law and I set aside the original decision. I allow the appeal under the 2006 Regulations and direct the appellant be issued with a residence card.
15. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No

order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis
TO THE RESPONDENT

I do not make a fee award as the application only succeeded after further evidence was submitted.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

