



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

Appeal Number: IA/47145/2013

THE IMMIGRATION ACTS

Heard at Field House
On 10th June 2014
Prepared 10th June 2014

Determination Promulgated
On 23rd June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ARDIAN BEQIRAJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonarero of Counsel

For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Ardian Beqiraj, the appellant, against the determination of First-tier Tribunal Judge Turquet in a determination promulgated on the 24th of March 2014. Mr Beqiraj, born on the 13th of February 1989, a citizen of Albania, had applied for a residence card as the partner of an EEA national. From the refusal letter of the Home Office, the

document which is dated the 27th of October 2013, it was noted that documents had been provided for use stated in the letter that declarations from family and friends cannot be accepted to support any application as they are not official documents. The other evidence the appellant has provided only dates from November 2012 to January 2013. This is an insufficient period of time for the Home Office to establish the appellant's relationship is durable. The appellant has not provided sufficient documentation to suggest that he is in a durable relationship. Due to the lack of evidence submitted, the Home Office department cannot accept that the appellant is in a durable relationship for the purposes of the EEA Regulations. It indicated that there was a right of appeal. It also indicated that if an Article 8 application were to be made under the Rules that a separate application would be required.

2. At the hearing the Judge heard evidence from the appellant and from his sponsor, Stella Bencze, and having set out the evidence at paragraphs 13 to 23, set out the findings that were made. In setting out the determination it was correctly noted that the burden of proof is on the appellant and that it was the balance of probabilities as the standard of proof, and the European Economic Area Regulations of 2006 were also properly referred to.
3. In the course of the determination the Judge noted a series of differences between the evidence of the appellant and the sponsor. The Judge also noted that documentation that might have been expected was absent. That would include a tenancy agreement and evidence that the rent had in fact been paid. The Judge also noted that phone bills were not present and a number of people who might have been able to give evidence, including the sponsor's sister, had not attended despite the length of time that had been available and in which alternative arrangements to cover her work commitments could have been made.
4. The issue of durability raised of course the issue of general credibility. The Judge did not find that there was no relationship. The Judge found that because of the inconsistencies it could not be found that the relationship was said to be durable. Having regard to the evidence that was given, the consideration given to it in the determination, and the reasons given by the Judge in the determination which are set out and reasoned, I am satisfied that that was a decision that was open to the Judge on the evidence that had been provided. Quite simply, the details can be used to assess the strength of the relationship, and since it was the strength of the relationship that was in issue, details such as their future plans or where they were working were clearly relevant to the issues that the Judge had to decide. I am satisfied that in that respect the Judge made no error in the approach to the evidence overall and that the determination overall read fairly and was sustainable.
5. There is a technical error within the determination and that is that the Judge did not consider the position under Article 8. For the sake of completeness and the avoidance of doubt it would have been better if the

determination had contained such a reference, however, having found that the relationship was not durable it would be inevitable under Kugathas that the Judge would have found that Article 8 was not engaged and that the decision therefore could not place the UK in breach of its obligations under Article 8, so although there is a technical error it is not material to the decision that was made.

6. The point I should have made at the start of this determination, which I did not, is that the permission given by First-tier Tribunal Judge Osborne, appeared to indicate that the permission was limited to the issue of Article 8. Having been referred to the relevant case of Ferrer, I am satisfied it was appropriate not to limit the consideration of the error of law to that issue, which is why I have accepted submissions from both parties with respect to the basic findings that were made.

CONCLUSIONS

For the reasons given the determination contained no error of law and the decision stands.

Signed

Date

Deputy Upper Tribunal Judge Parkes