



IAC-FH-NL-V1

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

Appeal Number: IA/41717/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27 August 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**MS DOREEN BONABAANA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Vokes of counsel, instructed by Wornham & Co,
Solicitors

For the Respondent: Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant who was born on 10 June 1981 is a national of Uganda. She applied for permanent residence on 15 January 2013 on account of her marriage to a Hungarian national. They had been married on 17 February 2006 in Hungary but they divorced on 21 January 2013. The application was refused on 30 September 2013 because there was no divorce certificate, there was no evidence that he had been exercising treaty rights at the date of divorce and also no evidence that she had been here for five years in accordance with the requirements of the EEA Regulations.

2. She appealed against this decision on 10 October 2013 and said she was not aware that she had to prove that her husband had been exercising a treaty rights at the time of their divorce and she relied on the fact that her marriage had lasted for three years and that for at least one year of their marriage they had been living in the United Kingdom. Her grounds also said that she was pregnant and currently unemployed.
3. At the hearing before First-tier Tribunal Judge Blake on 1 December 2014 she elected to appear in person as she had lost confidence in those then representing her. She said that she now accepted that she could not rely upon her previous marriage to an EEA national as a basis upon which to continue to reside in the United Kingdom. But she asserted that she was now in a genuine relationship with a British citizen and also had a child with him. At that hearing, the First-tier Tribunal Judge found her to be a credible witness and accepted that she was in a genuine relationship with a British citizen. But he did not adjourn the hearing to enable her to provide further evidence about their circumstances. He just noted that she had told him that she was intending to make a new application on that basis.
4. The solicitors now representing her subsequently appealed on the basis that her Article 8 rights had been raised and should have been dealt with by the judge. On the basis of case law current at that time that was a perfectly sensible ground to raise and this was the basis upon which Upper Tribunal Judge Goldstein granted her permission to appeal on 6 June 2015.
5. Prior to Judge Goldstein granting permission the President heard the case of *Amirteymour and others (EEA appeals; human rights)* [2015] UKUT 466 (IAC) on 31st March 2015 but it was not promulgated until last week. Therefore neither Upper Tribunal Judge Goldstein nor those representing the Appellant would have been aware of it.
6. The President decided that “where no notice under section 120 of the 2002 Act has been served and where no EEA decision to remove has been made, an appellant cannot bring a Human Rights challenge to removal in an appeal under the EEA Regulations. Neither the factual matrix nor the reasoning in *JM (Liberia)* [2006] EWCA Civ 1402 has any application to appeal of this nature”. In the light of this decision, the Appellant cannot succeed in her appeal but it does not detract from the fact the First-tier Tribunal Judge had believed that the appellant was a credible witness and that she had a genuine relationship with a British husband. Furthermore, I have noted that in preparation for today’s hearing her solicitors put in a large amount of evidence which showed that she was in a relationship which was subsisting with a British citizen and they had a child and also raised some issues about whether it would be reasonable for the child to leave the United Kingdom.
7. Counsel today quite fairly accepts that her appeal must be dismissed but hopes that the fact that there previously was a reasonable basis for her appeal will be taken into account when she makes an application for leave

to remain. When the Appellant appealed her grounds were arguable and it was on this basis that she delayed making an application for leave to remain.

Notice of Decision

1. The First-tier Tribunal Judge's decision and reasons did not contain any errors of law and is upheld.
2. The Appellant's appeal is dismissed.
3. No anonymity direction is made.

A handwritten signature in black ink that reads "Nadine Finch". The signature is written in a cursive, flowing style.

Signed
Upper Tribunal Judge Finch

Date
27th August 2015