



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/22491/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Field House

**Decision and  
Promulgated**

**Reasons**

**On** 11 March 2016

**On** 5 April 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**COSSI RUFIN BOKO BOUDAH  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Waithe (counsel) instructed by Calices Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Boyes promulgated on 14 August 2015, which dismissed the Appellant's appeal.

### Background

3. The Appellant was born on 13 September 1973 and is a national of Benin.

4. On 14 April 2014 the Secretary of State refused the Appellant's application for a residence card as the unmarried partner of an EEA national. The appellant's partner, Ayele Leocadie Pauline Folly ("the EEA National") is a French National.

### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Boyes ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 11 January 2016 Judge White gave permission to appeal stating *inter alia*

*"3. Having had regard to the grounds for permission to appeal and the decision and reasons, I am satisfied that in reaching his decision the judge arguably made an error of law for the following reasons; -*

*a. The judge noted many discrepancies in the evidence that were material to his decision.*

*b. It is arguable that such discrepancies arose out of misinterpretation (such issue having been raised by the appellant's counsel at the hearing itself [23])."*

### The Hearing

6. (a) Mr Waithe, counsel for the appellant, adopted the terms of the grounds of appeal. He told me that the decision contains a material error of law because there were errors in interpretation of the evidence from both the appellant and the sponsor before the First-tier Tribunal. He told me that the interpreter at the First-tier hearing was a French speaker, but the language required was French/African. He told me that the appellant tried to raise concerns about the quality of interpretation at the hearing but was simply told to keep quiet, and that he made submissions about the quality of interpretation before the First-tier. He took me to [21] and [22] of the decision (where the Judge sets out discrepancies in evidence in some detail) and told me that the Judge's findings there are flawed because of errors in interpretation.

(b) Mr Waithe told me that this case turns entirely on the question of whether or not the appellant and sponsor are in a durable relationship. He

told me that, because there are fundamental errors in the findings of fact made by the Judge, the Judge was unable to apply the correct test to determine whether or not a durable relationship existed, and that that amounts to a further material error of law. He urged me to set the decision aside and remit this case to the First-tier Tribunal to determine of new.

7. For the respondent, Mr Tarlow told me that the decision does not contain any errors, material or otherwise. He adopted the terms of the rule 24 response dated 22 January 2016. He told me that there are no errors in the Judge's fact-finding exercise; that the Judge correctly directed himself in law and then reached conclusions which were well within the reach of reasonable conclusions available to the Judge. He urged me to allow the decision to stand and to dismiss the appeal.

### Analysis

8. It was argued for the appellant that the Judge misdirected himself & applied the wrong test to determine whether or not the appellant and sponsor are parties to a durable relationship. There is no merit in that submission. Between [24] and [33] the Judge discusses the evidence and the facts found on the basis of that evidence, before coming to the conclusion that the appellant and sponsor are not parties to a durable relationship. At [32] the Judge correctly records that "*the burden of proof is on the appellant to demonstrate on the balance of probabilities that he and the sponsor are in a durable relationship...*" At [33] the Judge correctly notes that the term "*durable relationship*" is not defined in the 2006 regulations nor is it defined in the directive, before concluding that the appellant and the sponsor are not in a relationship at all.

9. In the course of submissions, I referred counsel for the appellant to [32] & [33] of the decision and asked him to tell me exactly where the error of law lay in relation to the Judge's treatment of the evidence, or findings of fact, or conclusions, in relation to "durable relationship". Counsel told me that the error was an error in the fact-finding exercise which, he argued, was tainted by errors in interpretation.

10. When I consider the decision as a whole I find that the Judge has not misdirected himself in law. I find that the Judge has correctly identified the issue in this case. Although counsel argues that there are two grounds of appeal, in reality there is only one - & that is a challenge to the quality of interpretation. The issue before me is whether or not the court interpreter's performance was so poor that the Judge's findings of fact cannot stand.

11. Between [3] and [6] the Judge sets out the background to this appeal. At [8] and [9] the Judge summarises the evidence. At [10] the Judge correctly identifies the burden and standard of proof. Between [11] and [14] the Judge summarises the appellant's submissions.

12. Between [15] and [18] the Judge considers whether or not the appellant and sponsor are parties to a valid marriage. No challenge is taken to what is said by the Judge there; in fact, there is no challenge directed at [1] to [19] of the decision.

13. Between [20] and [22] the Judge sets out "*significant fundamental discrepancies...*" in the appellant's evidence. It is there that the focus of this appeal lies. At [23] it is recorded that counsel submitted to the First-tier, after the evidence had been heard, "*... that any issues that may have arisen in particular in relation to the sponsor's evidence, may have been as a consequence of the language barrier and the sponsor's French cultural background.*"

14. In a carefully reasoned and detailed decision there is not one word to suggest that a challenge was raised in the course of the hearing to the quality of interpretation. The submission that is recorded from counsel for the appellant is not a challenge to the quality of interpretation, but is a reference to "*... the language barrier and the sponsor's French cultural background*"

15. What is important is that the Judge records that submission and then deals with it. At [23] the Judge not only states "*I do not agree...*" (with counsel's submission), but also gives detailed reasons for rejecting those submissions. The Judge records at [23] that the sponsor confirmed that she understood the interpreter and that the sponsor was given more than one opportunity to answer questions when she hesitated to answer. At [23] the Judge explains that he found discrepancies in the appellant's evidence. At [23] the Judge explains why he could not rely on the evidence of either the appellant or the sponsor.

16. At [21] and [22] the Judge sets out careful reasons for rejecting the evidence of the appellant and sponsor. Between [21] and [32] the Judge makes it abundantly clear that he has not only considered the oral evidence but has also fully considered the documentary evidence placed before him, before reaching conclusions which were manifestly open to the Judge to reach.

17. The determinative finding in the Judge's decision is his finding at [33] that the appellant and sponsor are not in a relationship at all. It is clear that the Judge reached that finding by considering all of the evidence (both documentary and oral). It is equally clear that that is a finding which was open to the Judge to reach. [23] makes it obvious that the Judge considered whether or not the evidence before him was tainted by errors in interpretation, and (for the reasons given by the Judge) concluded that it was not.

18. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief

explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

19. In this case, there is no misdirection in law & the fact finding exercise is beyond criticism. The decision is not tainted by a material error of law.

20. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

**21. No errors of law have been established. The Judge's decision stands.**

## **DECISION**

**22. The appeal is dismissed. The decision of the First-tier Tribunal stands.**

Signed

Date 15 March 2016

Deputy Upper Tribunal Judge Doyle