



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16222/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 26 November 2013

Determination promulgated
on 9 December 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NEVEN CRLJENAK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

DETERMINATION AND REASONS

- 1) The appellant is a citizen of Slovenia, born on 2 August 1981.
- 2) Maja Tomse is a citizen of Croatia, born on 20 December 1975. On 27 September 2012 she applied for a registration certificate as confirmation of her right of residence in the UK as a job seeker, and the appellant applied as her family member.
- 3) On 13 May 2013 the respondent refused the applications because she was not satisfied that the first appellant was a job seeker in terms of the regulations. The present appellant's application was refused in line with that refusal.
- 4) First-tier Tribunal Judge Atkinson considered the appellant's appeal and an appeal by Ms Tomse (case IA/16214/2013) "on the papers" and disposed of them in a determination promulgated on 23 August 2013. The FtT Judge found that Ms Tomse was a job seeker, and allowed her appeal. The FtT judge found insufficient evidence to

show that the appellant was in a durable relationship with her, and dismissed his appeal.

- 5) On 6 September 2013 FtT Judge Kamara granted permission to appeal, noting that the appellant enclosed 10 documents which had not been before Judge Atkinson, which appeared to support the claim to have been in a durable relationship with his partner for over 5 years, and that the respondent had not based her decision on lack of evidence of a durable relationship. Arguably, then, the appellant had been “disadvantaged by an additional matter being raised by the judge, without him being given the opportunity to address it.”
- 6) At the hearing on 26 November Mr Matthews fairly and correctly conceded that there was procedural unfairness amounting to material error of law, the judge having decided the case on a point not put in issue by the respondent, and which the appellant had no proper opportunity to answer. Mr Matthews accepted that the evidence showed a relationship going back some five years. He further pointed out that the respondent had been satisfied with the nature of the relationship in relation to earlier applications.
- 7) (There might have been a question whether the appellant was entitled to a registration certificate in his own right, but that is now incidental. I also note in passing that by the time of the FtT hearing, Ms Tomse was in employment, and that the appellant is now also in employment.)
- 8) The determination of the First-tier Tribunal is set aside. The appeal, as originally brought to the First-tier Tribunal, is **allowed**.
- 9) No anonymity order has been requested or made.



26 November 2013
Judge of the Upper Tribunal