



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

Appeal Number: IA/16946/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 24th June 2014

Determination

Promulgated

On 10th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY NOT DIRECTED)**

Appellant

and

MISS BEEBEE NOOREZAH GOBINDRAM

Respondent

Representation:

For the Appellant: Mr Gregor Jack, Home Office Presenting Officer

For the Respondent: M, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Secretary of State appeals, with permission, against the decision of the First-tier Tribunal (Judge Camp) to allow the respondent's appeal against refusal of her application for an EEA Residence Card as confirmation of a right of residence as the extended family member of an EEA national exercising European Community Treaty rights in the United Kingdom.

2. There was no attendance by or on behalf of the respondent. I was however satisfied that notice of the time, date and place of the hearing had been served, on the 21st May 2014, by first-class post at the address for service that appeared on the original Notice of Appeal. I was further satisfied that the respondent had been notified, in like manner, that the appeal to the Upper Tribunal may be determined in her absence if she (or her representative) did not attend the hearing. I therefore considered that it was appropriate to proceed in the respondent's absence with a view to meeting the overriding objective of disposing of appeals fairly, quickly, and efficiently.

Background

3. The respondent is a citizen of Mauritius who was born on the 18th November 1981. She claims to have met Mr Mihaly Ujj, a Hungarian national, in May 2007, and to have begun cohabiting with him, at an address in the United Kingdom, in June 2007. The respondent made her application on the 24th September 2012. She at that time stated that she was living with Mr Ujj at an address in Brentwood, Essex.

The primary decision

4. In an explanatory letter to the respondent, dated the 29th April 2013, the appellant's official noted that there had been no response when Immigration Officers had knocked at the door of the address given in the application form, and that "... neighbours confirmed that the occupants at the address is a Mauritian family consisting of husband and wife and their two children" [the appellant's explanatory letter to the respondent, dated the 29th April 2013]. The decision-maker refused the application, "due to the failure to issue the confirming the relationship between the EEA national and the main applicant".
5. The decision-maker did not state the date upon which Immigration Officers had visited the address in Brentwood. However, it must obviously have occurred at some time during the seven-month period between the 24th September 2012 and the 29th April 2013.

The appellant's case

6. The respondent's explanation for the outcome of the visit by the Immigration Officers at the address in Brentwood is contained in her letter, addressed "to whom it may concern" and dated the 19th March 2014, which appears at enclosure G of the bundle of documents that she submitted to the First-tier Tribunal. In that letter, she claimed to have moved from Brentwood to Peterborough on the 8th May 2012; that is to say, some 4 months before she made her application for a Residence Card. She also claimed to have informed the Home Office of her change of address, and said that she "believed" that she had also mentioned that she was living in Peterborough when she made her application. She did not therefore

“understand why the Immigration went to visit [her] at [her] previous address when they should have come at Peterborough instead”.

The decision of the First-tier Tribunal

7. It is clear from paragraph 9 of the determination that the respondent gave oral testimony before the judge whereby she adopted the contents of her letter (above) and stated that she did not know why her old address was on her application form. The judge also heard the oral testimony of the sponsor, in which he “confirmed that the contents of his statutory declaration were correct” [paragraph 11]. He also corroborated the respondent’s testimony that they had moved to Peterborough in May 2011.
8. The judge’s findings are set out at paragraphs 15 to 17:

[15] This is, in essence, a very straightforward appeal. The address given by the appellant (on her behalf by her solicitors) was an address from which she and the sponsor had moved. Immigration officers visited that address and, not surprisingly, concluded that the appellant and the sponsor did not live there. [16] I am satisfied, from the oral and documentary evidence adduced, that the appellant and the sponsor live together and have done for some 7 years. They are in a durable relationship. [17] The appellant had consequently satisfied me that she is the partner of an EEA national who is exercising Treaty rights in the United Kingdom.

Error of law analysis

9. With all due respect to the judge, the position was nothing like as “straightforward” as he suggested. The Tribunal was faced with evidence that the respondent had given an address at which she and her sponsor were said to be living at the time of application. However, by her own admission, they were not living at that address at that time. Moreover, the respondent was unable to provide an explanation for why this address appeared in her application. Her representative apparently suggested that it was a “mistake” on the part of the solicitors who had completed her application form [paragraph 14]. However, there was not a shred of evidence to support that contention. There is in any event a rebuttable presumption that solicitors act upon their client’s instructions, and thus have the necessary authority to make representations on their behalf. In circumstances such as these, therefore, it was especially important that the judge should have scrutinised the documentary evidence in order to see whether it provided support for the respondent’s claim that she had formerly lived with the sponsor at an address in Brentwood and/or was living with him at an address in Peterborough at the time when the application was made. However, beyond reciting the very general submission of the appellant’s representative that there was “documentary evidence of the address in Peterborough”, the judge simply glossed over the issue entirely. I am therefore satisfied that it is not possible to understand the reasons why the First-tier Tribunal allowed the appeal, and that this was an error of law

that can only be cured by setting aside its decision and determining the matter afresh.

Redetermination of the appeal

10. I am satisfied that this is an appropriate case in which to remake the decision on the basis of the evidence that was before the First-tier Tribunal. I am also satisfied that the respondent was informed of this possibility by way of the directions that were served, with the Notice of Hearing, on the 21st May 2014 (see paragraph 2, above).
11. At page 2 of the respondent's bundle of documents, there is a letter from the sponsor, addressed to the UK Border Agency, and which is dated the 5th September 2012. In that letter, it is stated that the sponsor and the respondent have been living at an address in Peterborough "since May 2012". I place little weight upon the contents of this letter for a number of reasons. The sponsor does not appear to have referred to it in the oral testimony that he gave to the First-tier Tribunal. Indeed, the First-tier Tribunal noted that the sponsor had "confirmed that the contents of his statutory declaration made on the 30 April 2008 were still correct" [paragraph 11]. If that evidence is to be taken literally, then the sponsor was saying that he was still living at the address in Brentwood, Essex, because this is the address that he gave in that declaration. Moreover, there is no explanation for the timing of this letter. It is dated some four months after the supposed move to Peterborough, and some three weeks before the respondent had submitted her application. It is thus unclear what might have prompted it.
12. The sponsor's payslips and bank statements are addressed to him at an address in Peterborough. However, his bank statements date back to May 2011 (see page 31) which is a full year before he supposedly moved to that address with the respondent. Moreover, there are no documents addressed to them jointly at that address. The documents that show that they at one time held a joint tenancy and a number of joint household utility accounts each relate to the address in Brentwood, Essex. The most recent of these is dated as long ago as 2010.
13. I am not therefore satisfied, on a balance of probabilities, that the respondent and the sponsor are (or were at the date of the First-tier Tribunal's decision) living together in a durable relationship that is akin to marriage. As such a relationship is a pre-condition to extended family membership, it follows that the decision to refuse the respondent's application for a Residence Card was and is in accordance with the Immigration (European Economic Area) Regulations 2006.

Decision

14. The Secretary of State's appeal is allowed. The decision of the First-tier Tribunal to allow the appeal against refusal of the appellant's application for

an EEA Residence Card is set aside, and is substituted by a decision to dismiss that appeal.

Anonymity is not directed

Signed

Date

David Kelly
Deputy Judge of the Upper Tribunal