



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

Appeal Number: IA/21769/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28th November 2014

**Decision & Reasons
Promulgated**

On 4th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MR ANOMAN MONDAH JULIEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Akinfenwa, of Michael Stevens Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of the Ivory Coast born on 15th June 1966. He applied for an EEA residence card as the durable partner of Ms Yvelise Jacqueline Sainte Luce, a citizen of France. He had a proxy marriage with Ms Sainte Luce in Mali on 20th June 2010. His application was refused on 11th April 2011. He appealed, his appeal was dismissed and permission to appeal to the Upper Tribunal was refused by Judge of the First-tier Tribunal

Holmes on 20th July 2011. He made a further application for an EEA residence card on 18th March 2013. This was refused on 28th April 2014 on the basis that insufficient evidence had been provided to show a durable relationship with Ms Sainte Luce. His appeal was dismissed in a determination of Judge of the First-tier Tribunal N Manuel promulgated on 4th September 2014.

2. On 16th October 2014 Judge of the First-tier Tribunal Simpson found that there was an arguable error of law in the determination of the First-tier Tribunal. He indicates that the arguable errors were based on failure to apply a number of reported guidance cases of the Upper Tribunal and a failure to follow the findings made by Judge Holmes in his decision of 20th July 2011.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. Mr Akinfenwa relied upon the grounds of appeal and skeleton. These alleged errors of law both in relation to the determination of the appeal in relation to the EEA residence card and Article 8 ECHR. However I found these documents very hard to follow. They seemed mostly to be general statements of law not all of which were correct, some of which were confused and most of which were not relevant. The grounds of appeal in this case were not in conformity with the standards to be expected as laid down in Nixon (permission to appeal grounds) [2014] UKUT 368.
5. I explained to Mr Akinfenwa that it was not an error of law to decide to give less weight to a piece of evidence unless this was irrational or unreasoned. I made it plain that Judge Manuel was correct in finding that the only issue before her was whether the appellant and Ms Sainte Luce were in a durable relationship. If they had been found to be in a durable relationship the decision would have been to allow the appeal as “not in accordance with the law” and the matter would have returned to the Secretary of State to exercise discretion to issue a residence card, see paragraph 22 of the determination correctly setting out YB (EEA reg 17(4) – proper approach) Ivory Coast [2008] UKAIT 00062. I also explained that Judge Manuel could not have erred in law by failing to take into consideration new evidence not before her, which was said to show the appellant’s durable relationship with Ms Sainte Luce, which Mr Akinfenwa was anxious to submit to the Upper Tribunal. This new evidence could only be relevant to re-making the appeal if an error of law was found, or to any new application to the respondent.
6. I asked Mr Akinfenwa to take me to the paragraphs of Judge Manuel’s decision which disclosed errors of law. He argued that Judge Manuel had erred at paragraphs 24 and 25 of her determination as it was not right to say that cards and photographs without dates should not be considered proper evidence. Further he argued that “family licensee” was a term

known in housing law and so what was said at paragraph 16 of the determination was also an error of law.

7. Mr Bramble submitted for the respondent that Judge Manuel had produced a perfectly reasonable and lawful determination based on the evidence before her, and it was important to note that the appellant had chosen to have this matter determined on the papers and so had chosen not to adduce oral evidence which might have supplemented the documentation. Judge Manuel had given many reasons at paragraph 18 of her determination explaining why she did not attribute much weight to the "family licensee" letter from Ms Blanche Golli. It was also obvious that letters, photos and cards without dates could not easily show a durable relationship as they did not evidence a time line over which a relationship had existed, thus showing its durability. Any lack of attributing weight to decisions made in 2011 was entirely correct. This was a long time ago and Judge Manuel had to determine if the appellant and his partner were currently in a durable relationship.
8. In reply Mr Akinfenwa argued that insufficient weight had been given to the health cards, the photographs with dates, the work documents of Ms Sainte Luce and the letters from the Tribunal to the appellant at Ms Sainte Luce's address.
9. At the end of the hearing I told the parties that I found no error of law in Judge Manuel's determination. I set out my reasons below.

Conclusions - Error of Law

10. Judge Manuel properly directs herself to the fact that under EU law there is no fixed time period proving a durable relationship, see paragraph 15 of the findings section of her determination setting out Dauhoo (EEA Regulations - Reg 8(2)) [2012] UKUT 00079
11. Judge Manuel properly and carefully considered all of the evidence said to show a durable relationship submitted by the appellant and Ms Sainte Luce. She considers the letters from the two landlords of the appellant and Ms Sainte Luce at paragraphs 16- 18. She notes that living at the same address does not mean that the appellant and Ms Sainte Luce are in a durable relationship. She notes that with respect of the second address only one tenant (and not the other tenant or the landlord) were apparently aware of the appellant and Ms Sainte Luce living at that address, and that a number of other adult people were said to live there.
12. At paragraph 19 Judge Manuel considers the health insurance cards but again can see no way in which these show a durable relationship between the appellant and Ms Sainte Luce as they have no issue date or address. She also finds that correspondence from the Home Office and Tribunal does not show the appellant and Ms Sainte Luce are cohabiting as it is not independent and just shows that he is using this address for correspondence.

13. At paragraph 20 she considers the past application made in 2011 but finds that this is too long ago to assist the appellant in currently showing his durable relationship with Ms Sainte Luce.
14. At paragraphs 24 and 25 Judge Manuel considers the cards and photographs, noting that two had dates on them but that these were from 2011 and 2012 (and so were not evidence of a durable relationship since that time), and also that some of the correspondence suggested that the parties were not living together and so did not show cohabitation in a durable relationship.
15. Judge Manuel's decision that, on the evidence before her, did not lead her to find the appellant and Ms Sainte Luce were in a durable relationship was careful and well- reasoned, and could not be said to be irrational in any way. It discloses no error of law.
16. Judge Manuel then properly goes on to find that as she has not found that the appellant and Ms Sainte Luce are in a durable relationship on the evidence before her that she is also not satisfied that they have family life together. The article 8 ECHR claim therefore fails at the first hurdle. This again is perfectly logical and shows no error of law.

Decision

1. The First-tier Tribunal did not err in law.
2. The determination of the First-tier Tribunal dismissing the appeal is upheld.

No anonymity direction is made.

Signed

Date 3rd December 2014

Judge Lindsley
Deputy Upper Tribunal Judge

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 3rd December 2014

Judge Lindsley
Deputy Upper Tribunal Judge