



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

Appeal Number: IA/13622/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 July 2015**

**Decision & Reasons Promulgated
On 22 July 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

Between

ANNA ANTWI

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms W Bremang, Counsel instructed by Shan & Co,
Solicitors.

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We see no need for, and do not make, an order restricting publication about this appeal.
2. This is an appeal by a citizen of Ghana against the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent refusing her a residence card as the wife of an EEA national.
3. The grounds criticise the First-tier Tribunal for not accepting the evidence that the appellant and her alleged husband were life partners and not

deciding if they were in a “durable relationship” under Regulation 8(5) of the Immigration (EEA) Regulations 2006.

4. The Notice of Immigration decision quite clearly addresses the contention that the appellant had entered into a valid marriage *and* the contention that she was living as the partner in a durable relationship with an EEA national. There is reference to both Regulation 7 and Regulation 8(5) of the Regulations in the immigration decision and in the refusal letter that supports it. It is perfectly plain to us that it was the appellant’s intention to rely on both contentions in support of her claim and this ought to have been apparent to the First-tier Tribunal Judge who, we have to say, neglected to deal with the contention that the appellant lived in a durable relationship with her alleged partner.
5. What the judge did do, and we find did satisfactorily, was to rule that the appellant had not married the alleged partner. There was evidence that the appellant and her alleged partner had been through some sort of ceremony but not one that was valid both in the laws of Ghana and the law of the Netherlands, the Netherlands being the country of nationality of the alleged husband.
6. We do not criticise the First-tier Tribunal for doing what it did do. The criticism is that it failed to deal with the rest of the appeal and so did not determine whether in fact the appellant and partner were in a durable relationship.
7. It is important to emphasise that the Reasons for Refusal Letter made it plain not only that it had not been established that there was a durable relationship and criticised the parties for the lack of evidence supporting the claim, but it also referred to an earlier application that had been refused for similar reasons. The relevance of that in these proceedings is limited but it shows that it should have been very obvious to the appellant and those advising her when they prepared this appeal that she was required to prove that she was indeed in a durable relationship as she claimed. The substance as well as the form of the relationship was very much in issue and it was dealt with inadequately in the First-tier Tribunal’s Decision.
8. We find it significant that, even though this was understood to be a point of contention between the parties, very close to the day when the appeal was listed for an oral hearing before the First-tier Tribunal, the appellant’s solicitors wrote to the Tribunal and said that they wanted the hearing vacated because the appellant had instructed them that she wanted the appeal to be decided on the papers.
9. The obvious disadvantage of an appeal on papers is that there is no opportunity for supplementary questions and, much more importantly, no opportunity to test the evidence in the statements by way of cross-examination. That must reduce the weight that can be given to the

contents in the statement when those contents are known to be contentious.

10. There were statements. They are before us. They are not particularly illuminating. The appellant sets out her case in eight paragraphs. In a sense all the things that need to be mentioned are covered. There is an explanation of how the parties to the relationship met each other, an explanation of the nature of the relationship and of the customary marriage celebration but there is little information of real substance or detail. Very similar points can be made about the statement of the alleged partner. His statement is a little longer and does refer in part to what attracted him to his alleged partner and the time they spent together but we do not have any detailed evidence about their lives together. We are not told anything in any detail about any shared relationships, about things they do together, about how they work out their partnership. This evidence is superficial and, as we say, cannot be tested.
11. There is also supporting evidence from an uncle and someone who, it is said, co-habited with the appellant and her alleged partner. These statements are of very limited value because there is no way of testing the identity of the alleged authors. The persons concerned are not present and cannot be cross-examined. The statements deserve only minimum weight.
12. There is documentary evidence showing fairly persuasively that for a time at least the appellant and her alleged husband shared the same address. It does not prove that they live together as partners although it does tend to suggest some continuing relationship and some co-operation between them. This does not particularly surprise us. If, as has been suggested implicitly by the Secretary of State, the relationship relied upon has been described improperly for immigration purposes it is unsurprising that the appellant relied on the support of someone she knew. It may well be that they shared a house for a time but we see nothing which leads us to think that their relationship is really more than friendly. We have not been told very much about it in a way that suggests affection and commitment and all the things that make a relationship intimate and durable within the meaning of the Rules.
13. There is no "killer point" in this case. We have seen nothing that proves that either party is completely unreliable. Our task is to decide on the weight to give to particular strands of evidence and to the evidence as a whole.
14. We have considered the papers carefully. We remind ourselves that the standard of proof is the balance of probability. Putting all these things together, although we recognise that there are some points that are in favour of allowing the appeal, cumulatively the evidence is not persuasive.
15. The appellant has not made out her case and we dismiss the appeal on all grounds.

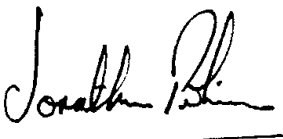
16. We are not sure if article 8 of the European Convention on Human Rights is a live issue before us. This is an EEA case where there has been no removal decision. There is nothing before us to suggest that this decision contravenes the United Kingdom's obligations under the Human Rights Act.

17. We dismiss the appeal on all grounds.

Notice of Decision

18. The First-tier Tribunal erred. We set aside its decision and substitute a decision dismissing the appeal on all grounds.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', is written over a horizontal line.

Dated 21 July 2015