



IAC-AH-DP-V1

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

Appeal Number: IA/34413/2013

THE IMMIGRATION ACTS

**Heard at Taylor House
On 7 October 2015**

**Decision & Reasons Promulgated
On 26 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR KHAWAR JAHANGIR BAIG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chohan of Counsel

For the Respondent: Mr P Duffy, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan. He appeals to the Upper Tribunal with permission from Upper Tribunal Judge Craig who found an arguable error in the decision of the First-tier Tribunal (FTT). The FTT dismissed the appellant's appeal against the respondent's decision to refuse to grant the appellant a residence card on the basis that he had failed to establish a durable relationship with an EEA national exercising treaty rights in this country. That decision was on 16 July 2013 but there was an earlier appeal to the FTT which the respondent challenged.

Background Facts

2. The appellant was born on 21 January 1956. It appears that he first entered the UK on 7 March 2003. The application for a residence card was first made on 5 March 2013 on the basis that he had formed a relationship with an EEA national, namely, Zinaida Petrauskiene, a Lithuanian national who was born on 15 May 1959 and is female. The appellant claimed to be in a relationship of partnership with her. The application was, however, rejected on 16 July 2013.
3. The FTT decision presently impugned was made by Judge of the First-tier Tribunal Ford (the Immigration Judge) on 23 January 2015 following a hearing on 5 January 2015. The Immigration Judge dismissed the appellant's appeal.
4. Following a notice of appeal dated 13 April 2015 the respondent submitted a Rule 24 response.

Grounds of Appeal

5. These allege that the Immigration Judge reached a perverse finding but because the appellant and his EEA partner used the services of an interpreter at the Tribunal hearing they could not adequately converse in English. This was the principal ground on which Judge Craig gave permission to appeal to the Upper Tribunal.

The Hearing

6. At the hearing I heard submissions by both representatives. Mr Chohan pointed out there may be a number of reasons why a litigant may require an interpreter, not least of which is that he may be less comfortable in a foreign language than his own. The Immigration Judge also attached weight to the fact that the tenancy agreement was not in the appellant's name. There had been evidence given that the sponsor had lived at the property before they had met. Indeed it was a large property, larger than was required for their own use, because the sponsor's son also lived at the address. On the balance of probabilities the evidence was sufficiently strong to satisfy the Tribunal that the application was bona fide. The application had been going on for four years.
7. By way of response Mr Duffy said that the lack of English between the parties did go to the heart of the case. The challenge against the Immigration Judge's decision was based on perversity. That was a very high hurdle to overcome. I was reminded that if I allowed the appeal I should direct the respondent to issue a residence card.
8. The appellant pointed out by way of reply that both parties had confirmed that the sponsor's child was the stepson of the appellant and the appellant was treated as the biological father.
9. At the end of the hearing I reserved my decision as to whether there was a material error of law and if so what steps to take to put it right.

Discussion

10. The burden rested on the appellant to show he was in a durable relationship with an EEA national. In practice a period of cohabitation of approximately two years is required in order for a Tribunal to be satisfied that the relationship is akin to marriage. The appellant claimed that his relationship with Ms Petrauskiene was a “permanent relationship” akin to marriage.
11. The present appeal has a long history. The application for a residence card was made on 5 March 2013. The respondent considered the application on 16 July 2013 under the “extended family member” provisions of the EEA Regulations. However, having set out the requirements of Regulation 8(5) (which sets out the requirement that there should be a “durable relationship” with an EEA national) the respondent assessed the period to be met on the documents supplied. The only documents of note were documents showing that the appellant lived at the same address as the sponsor. Unfortunately, this did not prove they were in a “durable relationship”. Evidence of joint financial commitments, for example the joint payment of utility and council tax bills and joint bank accounts, were not included. Because of this lack of evidence the respondent refused the application under Regulation 8(5) of the EEA Regulations. The respondent considered Article 8 of the ECHR but decided it did not add anything and the appellant was invited to voluntarily return to Pakistan.
12. The matter has come before the First-tier Tribunal on two occasions and I note that on the first appeal Judge Grimmett (in January 2014) noted the appellant’s poor English. However, due to finding the appellant overall to be credible, he had established his entitlement to a residence card based on his durable relationship with the sponsor. It was subsequently returned by the Upper Tribunal to the First -tier Tribunal which resulted in the hearing before the Immigration Judge.
13. In the present appeal the Immigration Judge was faced with a similar lack of evidence that the respondent had faced when she first refused the application. It appears the parties claim to have met at a party in August 2010, despite their poor English. Given that this was four years before the hearing before Judge Grimmett one can well imagine why the Immigration Judge considered that the extent of their language ability was an important issue in the appeal before him. Several assertions were made in the witness statements as to the extent of detailed conversations about their lives and life experiences. Neither the appellant nor the sponsor spoke each other’s language. The Immigration Judge made it clear at the outset of the hearing (see paragraph 5 of his determination) that he considered it to be a “complete rehearing” and that the issues were not limited to the length of cohabitation but also extended to the fact of cohabitation. He found the parties had been co-occupiers of a large house with three double bedrooms together. This was not indicative of a close relationship.

Conclusions

14. The Immigration Judge made a finding that was not justified merely by the use of Tribunal interpreters. This was not by itself an indication that they spoke poor English. One can understand that parties who come before the Tribunal feel uncomfortable in a formal setting accurately relaying contents of their evidence and answering searching questions. However, the Immigration Judge gave ample additional reasons for dismissing the appeal. These included the fact that medical letters, bank statements and other documents were all addressed to the appellant at the property where he lived with the sponsor (see paragraphs 8 and 13). The Immigration Judge rightly attached little weight to the fact that the tenancy agreement relating to the property where they lived was solely in the sponsor's name. However, he felt unable to ignore the fact that there was inadequate evidence of a pooling of resources and joint outgoings as well as other indicia of a close family relationship. I accept that the Immigration Judge placed excessive reliance on the requirements of the appellant and the sponsor for a Tribunal interpreter but I do not find that the other reasons for dismissing the appeal lack cogency or, as it was put, were perverse.
15. I find that the Immigration Judge was entitled to find the size of accommodation was not commensurate with the size of the family occupying it. In addition, there was a lack of evidence of cohabitation as opposed to co-occupation. There was an absence of corroboration from independent third parties as to the extent of the relationship between the appellant and the sponsor. Although there was no requirement as such for corroboration, the Immigration Judge was entitled to look at the overall quality of the evidence produced and ask himself whether the civil standard of proof was discharged. It would have been possible to call witnesses to say whether or not the appellant and the sponsor had been observed talking in English, but such evidence was not produced.
16. Although the decision could have been better expressed and I do not think that the appellant and the sponsor should be admonished for utilising the Tribunal's interpreter facilities, I have decided that overall the decision of the First-tier Tribunal was sufficiently cogent to be sustainable.

Notice of Decision

For the reasons given I find there was no material error of law in the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal therefore stands and the decision of the respondent to refuse a residence card also stands.

The First-tier Tribunal did not make any direction for anonymity or a fee award and there is no challenge to those decisions.

Signed

Date

Deputy Upper Tribunal Judge Hanbury