



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

Appeal Number: IA/04384/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 June 2016**

**Decision &
Promulgated
On 5 July 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR BOLADE OTEJU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, Counsel

For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse to issue him with a residence card under the Immigration (European Economic Area)

Regulations 2006 (“the 2006 Regulations”) was dismissed by First-tier Tribunal Judge N M K Lawrence (“the judge”) in a decision promulgated on 1 October 2015. Having assessed the evidence, the judge concluded that the appellant had not shown that he and his partner, an EEA national, were in a durable relationship, for the purpose of Regulation 8 of the 2006 Regulations.

2. Permission to appeal was sought on several grounds and granted on 12 April 2016, by an Upper Tribunal Judge.
3. In a Rule 24 response from the Secretary of State, made on 11 May 2016, the appeal was opposed. The response mainly concerned the first ground, which was not pursued by the appellant, as made clear in a letter to the Upper Tribunal from his solicitors, dated 27 May 2016.

Submissions on Error of Law

4. Mr Mackenzie said that the judge failed to take into account and assess all the evidence before him. In dismissing the appeal, his focus had been a small number of incorrect or inconsistent answers given by the appellant and his partner, following an interview arranged by the Secretary of State. However, the appellant's stepdaughter, Ms Elizabet Nduka, his partner's daughter from a previous relationship, attended and gave evidence, as did another of the appellant's relatives. The judge noted Ms Elizabet's attendance at paragraph 3 of the decision but gave no consideration at all to her evidence in what followed. Ms Elizabet's evidence supported the appellant's case that his relationship with his partner was entirely genuine.
5. The decision showed that the judge highlighted one or two errors from a total of some 117 questions put to the appellant and his partner in interview, and appeared to downplay the consistent answers, overwhelmingly the majority of those given. The stepdaughter's evidence supported the appellant's case but was simply not considered.
6. In a further ground, it was contended that the judge erred in his treatment of supporting photographs. Having noted in the decision that the appellant gave detailed evidence about them, the judge found that they might have been “staged”. This suggestion was not put to the witnesses, which was a clear error as it suggested possible dishonesty on their part. All the evidence fell to be weighed and balanced. The judge was required to take into account the consistent answers given in interview, the evidence of the stepdaughter and the photographic evidence. At paragraph 14 of the decision, the judge considered the evidence of events on the day that the appellant moved in with his partner, finding that what appeared to be inconsistent accounts from the appellant, his partner and his cousin undermined the credibility of the overall case. That amounted to inflating what was, in truth, only a small and peripheral issue. Overall, the judge failed to give proper weight to the evidence supporting the appellant's case.

7. Ms Brocklesby-Weller said that the burden fell on the appellant to establish his Regulation 8 case. The decision showed that the judge was alert to all the evidence and recorded, at paragraph 3 of the decision, the witnesses who gave evidence. He considered the photographs and the oral evidence relating to them at paragraph 19 and considered the appellant's relationship with Ms Stella, another stepdaughter, at paragraph 16. At paragraphs 8 and 17 of the decision, the judge recorded that the appellant and his partner gave the same or similar answers to questions about their personal or joint histories. He was entitled to assess the accounts of events on the day the appellant moved in with his partner as significant and meriting careful scrutiny. Evidence given by the cousin was wholly inconsistent with what the appellant and his partner said. There were also inconsistent answers about the appellant's working patterns. After a holistic analysis, the judge concluded that the appellant had not discharged the burden of proof.
8. I indicated that I did not need to hear further from Mr Mackenzie.

Conclusion on Error of Law

9. The decision shows that the judge carefully assessed parts of the evidence, including the discrepant answers given in the interview arranged by the Secretary of State. I was taken to the interview record and it is apparent that the overwhelming majority of the answers given were consistent, the appellant and his partner giving substantially the same account of their relationship. The discrepancies were few in number. In assessing that evidence, the judge has obviously given what appears to be determinative weight to the different answers regarding recent events but it is difficult to see what weight he has given to the consistent answers. They are mentioned at the beginning of paragraph 8 and his overall conclusion shows that he felt that any support they gave to the appellant's case was outweighed by the small number of inconsistent answers. However, as Mr Mackenzie submitted, it is difficult to see how the consistent answers fell to be assessed as having inherently less weight than the inconsistent ones, as they concerned normal, everyday aspects of a relationship, including gifts brought by one partner for another and the overall development of the relationship.
10. Significant is the absence of any assessment of the weight to be given to Ms Elizabeth's evidence. Her attendance and the fact that she adopted her witness statement and was then cross-examined and re-examined, is noted at paragraph 3 but nowhere else is there any engagement with what she said, which undermines the overall conclusions and amounts to an error of law.
11. Ms Brocklesby-Weller quite rightly pointed to paragraph 14 of the decision and the apparent inconsistencies which emerged regarding events on the day that the appellant moved in with his partner. That part of the evidence

was certainly capable of weakening the appellant's case but it fell to be taken into account with all the evidence, including the including the evidence of Ms Elizabet. Similarly, the judge's finding that the photographs might have been staged and could not be looked at in isolation (paragraph 19 of the decision) required him to take into account all the evidence before making it. For example, Ms Elizabet's evidence might well have had an obvious impact on the assessment of the weight to be given to the photographs.

12. In summary, the judge erred in failing to engage with and take into account all of the evidence before him, and particularly the evidence given by the appellant's stepdaughter, Ms Elizabet. That failure undermines the conclusion that the appellant had not shown that he and his partner were in a durable relationship. The decision of the First-tier Tribunal is set aside must be remade.
13. Having taken into account the views of representatives regarding the appropriate venue, I conclude that the appeal should be remade in the First-tier Tribunal. Extensive fact finding will be required and in view of the importance, or potential importance, of Ms Elizabet's evidence, none of the findings of fact made by the judge will be preserved. The hearing will be de novo.

DECISION

14. The decision of the First-tier Tribunal contains a material error of law and is set aside. It shall be remade in the First-tier Tribunal, at Hatton Cross, before a judge other than First-tier Tribunal Judge N M K Lawrence.
15. There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date: 5th July 2016

Deputy Upper Tribunal Judge R C Campbell