



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

Appeal Number: IA/27800/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision & Reasons
Promulgated
On 23 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**TARIQUL ISLAM APU
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms. A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Beach promulgated on 6 May 2015.
2. The Appellant is a male citizen of Bangladesh born 4 April 1984 who applied on 12 March 2014 for a residence card as the unmarried partner of an EEA national.

3. The application was made on the basis that the Appellant was in a relationship with, Yanka Mihaleva, a Bulgarian national. It was contended that the Appellant's partner, to whom I shall refer as the Sponsor, was exercising treaty rights in this country.
4. The application was refused on 24 April 2014. The Respondent did not accept that the Sponsor was exercising treaty rights as a student and, therefore, did not accept that she was a qualified person as defined in regulation 6 of The Immigration (European Economic Area) Regulations 2006 (hereafter "the 2006 Regulations"). The Respondent took this decision because the evidence failed to show that the Sponsor was studying or was self-sufficient and, that she held comprehensive sickness insurance in the UK. Further, the Respondent observed that the Appellant had not provided sufficient evidence that he and the Sponsor were in a durable relationship.
5. The Appellant appealed to the First-tier Tribunal (IAC).
6. Judge Beach decided the appeal following an oral hearing having heard evidence from the Appellant, Sponsor and the Sponsor's sister. The Judge was satisfied that the Sponsor was registered on a college course but found that she did not attend as often as she should. Notwithstanding, the Judge recognised that mere registration with a college was not sufficient and that the Sponsor was also required to show that she held comprehensive sickness insurance cover and provide an assurance to the Respondent that she and her family would not be a burden on the State. The Judge noted that there was no evidence of comprehensive sickness insurance cover before her, and little evidence of the resources available to the Appellant and Sponsor to show that they would not be a burden on the State. The Judge further noted that there was little evidence of the Appellant's employment from which she could assess whether sufficient resources were available. She observed the evidence that the Appellant and Sponsor were seeking to obtain Housing Benefit and confirmation of the Sponsor's eligibility for Council housing as well as Local Authority support, which indicated the couple did not have sufficient resources not to be a burden on the State. The Judge found therefore that the Sponsor was not a qualified person and thus not exercising treaty rights in the UK.
7. As for whether the Appellant and Sponsor were in durable relationship, whilst the Judge accepted the couple had been in a relationship – it being observed that the Appellant and Sponsor had conceived a child, which the Sponsor later lost – the Judge was concerned about the Appellant's intentions regarding the future of the relationship. She noted the Appellant had withheld information about the relationship from his family. The Judge noted the evasive character of the Appellant's evidence and the contradictions and concluded that the evidence supported the view that the Appellant was in a hurry to commence a relationship with an EEA national. The Judge concluded that there were sufficient doubts to suggest that the Appellant had other reasons for being in the relationship other than affection for the Sponsor. The Judge was thus not satisfied that the

couple were in a durable relationship and found accordingly. Finally, the Judge considered Article 8 of the ECHR and found that the decision was proportionate.

8. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds drafted by the Appellant rehearse the history and evidence and essentially assert that the decision was wrong.
9. Permission to appeal was granted by Judge of the First-tier Tribunal McDade who found it arguable in view of the fact that the Judge was in "two in two minds as to whether the relationship was a wholly genuine one", whether there was insufficient reasoning as to why the Judge was not persuaded that the relationship was durable
10. Following the grant of permission, the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, opposing the appeal.
11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

12. The Appellant appeared and was in attendance with the Sponsor. He was unrepresented and indicated that he was ready to proceed without representation. I communicated with the Appellant through the assistance of a court-appointed interpreter and I was satisfied that he fully understood the proceedings. I explained the purpose of the hearing and the procedure. I took the Appellant through the background and history and he was referred to the grounds of application. I invited the Appellant to add to the grounds if he so wished. In so doing he stated that he had provided evidence that the Sponsor held the necessary insurance to his then solicitor, but he could not say if this was presented to the Judge at the hearing. He produced the Sponsor's European Health Insurance card and a health insurance policy. The date of issue of the former was not discernable and the latter post-dated the date of hearing before Judge Beach.
13. Ms Everett submitted that the Judge did not err in law. She stated that there was no evidence before the Judge that the Sponsor held comprehensive sickness insurance at the date of hearing. She observed that the European Health Insurance card did not bear a date of issue and was not in English. There was no translation. She noted the current insurance policy was taken out after the hearing before the Judge. Ms Everett submitted that the Judge gave sufficient reasons for finding that the couple were not in a durable relationship.
14. In reply the Appellant reiterated that he had provided documentation to his then solicitor which was not, in turn, placed before the Judge.

15. I reserved my decision.

My Conclusions and Reasons

16. Whilst the Appellant was represented before Judge Beach he appears before the Upper Tribunal as a litigant in person and, whilst his grounds of application largely disagree with the Judge's findings, the issues that arise therein and from the subsequent grant of permission are two-fold. Firstly, whether the Judge had before her evidence that the Sponsor held comprehensive sickness insurance and, second, whether the Judge gave sufficient reasons for finding that the couple were not in a durable relationship. In this latter regard it was the Appellant's contention before me that at a previous hearing before the Upper Tribunal it was accepted that the reasoning was so deficient. This is not made out on a perusal of the appeal history which shows that a previous hearing was adjourned as the Appellant required the assistance of an interpreter. I am thus satisfied that the two issues remain at large and require consideration.
17. I conclude, having considered the respective position of the parties' that, the Judge did not materially err in law.
18. In summary, the Appellant's claim is that he entered the UK as a student in 2010 and subsequently overstayed his leave to remain. In early 2013 he entered into a relationship with the Sponsor. They met through Facebook in January 2013 and the relationship developed initially through Facebook and Skype contact. They met for the first time on 15 April 2013. The Sponsor is disabled and the Appellant is her sole carer. The couple are cohabiting. The Appellant is working whilst the Sponsor is a student.
19. The Judge set out in detail the Appellant's case and the evidence between [8] and [35], and submissions between [36] and [40]. The consideration of the parties' positions is detailed. The Judge heard contested evidence from the Appellant, Sponsor and the Sponsor's sister. The Judge was clearly alive to that evidence and the issues before her - [41] to [43] and [46] to [49]. Between [41] and [54] the Judge sets out what she made of the evidence and the arguments. At [44], [45], [53] and [54] the Judge found as follows:

"44. The Appellant and the sponsor both stated that the sponsor attended College. The sponsor showed her college ID card but had not provided any other documentation to confirm that she was registered at college even though the reasons for refusal letter clearly raise this as an issue. The sponsor gave some details of her studies but was unable to name modules. I gained the distinct impression that whilst the sponsor may be registered with the College her studies did not play a major part in her life. This may simply be because she does not attend the College full time or maybe because she is not attending as often as she should attend. The Appellant and the sponsor were both able however, to give some details regarding the course and the sponsor did provide an ID card for the College. I find that the sponsor is

registered on a course with the college although she may not attend as often as she should.

45. However, mere registration with the College is not enough to show that the sponsor is exercising her Treaty right in the UK. The sponsor must also show that she has comprehensive sickness insurance and provide an assurance to the Respondent that she and her family members will not be a burden on the State. There was no evidence of comprehensive sickness insurance before me. Furthermore, there was very little evidence of the resources available to the Appellant and the sponsor to show that they will not be a burden on the State. Indeed, it is clear that they were seeking to obtain Housing benefit because the Appellant's evidence was that he had telephoned the Local Authority to ask them for this and had been informed that his partner was not eligible. It appears also that he and his sponsor may have been seeking eligibility for Council housing given his comment that they were told she was not eligible for residency reasons. This does not suggest a couple who have sufficient resources not to be a burden on the State notwithstanding the fact that the Appellant states that he works in the UK ..."

...

53. However, there was sufficient consistent evidence before me to suggest that the Appellant and sponsor now live together. There were discrepancies in how long they lived at a particular address when they stated that they first moved in together and it may well be that they were not living together as such at that stage. However, there is documentary evidence before me now which suggests that they are living together and their evidence was in general consistent with regard to the most recent events. I also take account of the fact that the sponsor was recently pregnant and lost the baby. Clearly she is in a relationship of sorts with someone in order to become pregnant. Given the way she spoke about the Appellant I find it is more likely than not that the appellant was the father of the child which suggests that they have a relationship.

54. What causes me some concern though is the Appellant's view of the future of that relationship. Although he states that he is engaged he has withheld information about the relationship from members of his family. His evidence was that his mother was unaware of the relationship although he had told his brother in law. I understand that his family would not wish him to live with a woman before marriage but this does not stop him from informing them that he is in a relationship and engaged to be married without saying that he is living with her. The Appellant was extremely vague about this and said that he had only spoken to his brother in law about the relationship (the sponsor stated that the Appellant had spoken to his brother and brother in law). The lack of discussions regarding the purported engagement causes me some concern as to the Appellant's wishes with regard to the relationship particularly when coupled with his assertion that he was told to contact the sponsor by his friend and that he then considered himself to be in a relationship with the sponsor as soon as that first contact took place. This suggests someone who is in a hurry to start a

relationship with an EEA national with all the perceived benefits attached particularly when the Appellant's overstaying is also considered. Furthermore, the evidence of an engagement from both the Appellant and the sponsor was somewhat vague and contradictory. The sponsor's sister did not appear to know that they were engaged and simply stated that she hoped they would marry because it was against her family's Christian faith for them to live together. I find that the sponsor views herself as being in a genuine relationship with the Appellant and that there is a relationship between them. However, I further find that the Appellant's intentions with regard to that relationship are not clear-cut and that there are sufficient doubts to suggest that he has other reasons for being in the relationship other than simple affection for the Appellant. I therefore find that the relationship is not a durable relationship for the purposes of the EEA Regulations. In any event, I have also found that the sponsor is not exercising her Treaty rights and so the Appellant would not be entitled to a residence card on the basis (sic)."

20. The first issue that I must consider is whether evidence that the Sponsor held comprehensive sickness insurance was before the Judge. The Judge states in emphatic terms that there was no such evidence [45]. I am satisfied that the Judge did not err in so stating. There is nothing to indicate that such evidence was placed before her. Even on the Appellant's admission before me he accepts that that evidence was not placed before the Judge. The insurance policy documentation now produced was not in existence at the date of hearing before Judge Beach and there is no evidence that the European Health Insurance card was issued at the date of hearing and, if it was, whether its existence was drawn to the attention of the Judge. The Judge cannot be criticised for not considering evidence that was not before her. I am satisfied that there was no error in the Judge's approach.
21. As for the second issue as to whether the Judge's reasoning was sufficient, I am satisfied that the Judge was not in "two in two minds" about the relationship and that she gave clear and sufficient reasons for finding that the couple were not in a durable relationship. In my view, it is clear that whilst Judge Beach accepted the existence of a relationship she was not satisfied that the Appellant's intentions towards the Sponsor were indeed genuine. She reached that conclusion having heard evidence from the Appellant and witnesses. The Judge gave consideration to the evidence and her conclusions at [50] to [54] are supported by the detailed recital of the evidence. The adverse credibility findings are rooted in the evidence and are cogent, to the point that the Judge's conclusions were properly open to her on the evidence. Upon a holistic reading of the decision, I am satisfied that it is clear why Judge Beach reached the decision that she did. I find that there was no error in the Judge's approach and what is essentially being put forward is a disagreement with her conclusions and findings. I find that the decision is not devoid of reasoning which are proper, intelligible and adequate to sustain the conclusions drawn.

22. The question of whether a couple are in a durable relationship is a question of fact. The Judge reached a decision that was open to her on the evidence at the date of hearing. The factual landscape has since changed, in that the Sponsor gave birth to the Appellant's son on 10 November 2015. Whilst this was evidently not the position before the Judge for which this appeal concerns, it may well be the subject matter for a new application should this be a course the Appellant chooses to undertake.
23. The decision dismissing the appeal is not vitiated by a material error of law and shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law and stands. The appeal is dismissed.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Bagral

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge Bagral