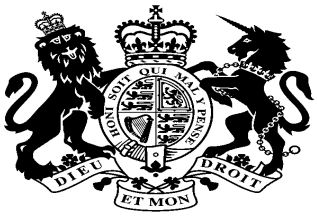

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/08967/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 22 July 2019	**On 31 July 2019**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

ANNELY [B]
[NO ANONYMITY ORDER]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms Afolaka Jaja, Counsel instructed by Howe & Co, solicitors
For the respondent: Ms Alice Holmes, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 26 April 2016 to refuse to issue a residence card evidencing a permanent right of residence pursuant to Regulation 10(5)(d)(iv) of the Immigration (European Economic Area) Regulations 2006, on the basis that she is a person whose continued right of residence in the United Kingdom is warranted by particularly difficult circumstances, in this case the domestic violence which occurred during her marriage to her Italian husband, [RB], an EEA national. The appellant is a citizen of Namibia.

Refusal letter

2. The respondent's refusal letter set out Regulation 10 *in extenso* but did not set out the appellant's account. The reasons for refusal begin at page 3 of 6, immediately after the lengthy citation of Regulation 10, and may be summarised thus: there was no evidence of the exercise of Treaty rights by the sponsor; there was no evidence of the appellant exercising Treaty rights in her own right after the dissolution of her marriage; there was no evidence of the support provided by Mr Justin Paul O'Keeffe and therefore it could not be accepted that the appellant was self-sufficient; and there was no independent evidence of the claimed domestic violence which the appellant suffered.

Factual matrix

3. Following the First-tier Tribunal hearing and the Judge's findings, the facts in this appeal are not now contentious. The appellant married her Italian sponsor husband at the register office in Leeds on 24 December 2005, but the First-tier Judge accepted that marriage broke down in 2012 by reason of domestic violence.

4. The marriage ended by decree absolute on 1 March 2013, divorce proceedings having been brought in the Principal Registry of the Family Division in 2012. The parties were estranged and the Court dispensed with service on the sponsor. He has not assisted the appellant in these proceedings either.

5. The respondent searched the HMRC records for the sponsor and found that he was earning an employment income continuously from tax year 2008-9 to tax year 2013-14, and therefore the First-tier Judge accepted that the appellant and sponsor had been living in the United Kingdom together for 5 years and that the sponsor was exercising Treaty rights during that 5 years.

6. There was satisfactory evidence that the appellant and Mr O'Keeffe, who now supports her, had a close and long-standing relationship, that he provided her with rent-free accommodation in his house, that they 'enjoyed a level of co-dependency' and that he supported her financially by providing money when she needed it, about £250-£400 a month. Mr O'Keeffe had also made a will in the appellant's favour, leaving her part of his estate.

7. In addition, the appellant was earning some money herself by babysitting for friends, about £30-£40 a time, but this was not regular work. The First-tier Tribunal accepted that the appellant had not depended on state benefits at all since her divorce and that she wished to return to her previous employment as a care worker.

8. At the hearing, the respondent was permitted to raise the question of comprehensive medical insurance, which was not among the reasons given in the refusal letter. The evidence produced at the hearing satisfied the First-tier Tribunal that the appellant did have comprehensive medical insurance.

First-tier Tribunal decision

9. The First-tier Judge considered that the question whether the appellant was a self-sufficient person was the main issue. After setting out the evidence summarised above, the First-tier Judge said this:

> "44. However, the requirements under the Regulations, in relation to self sufficiency, are specific and the appellant also needs to show that her income or resources exceeds the maximum level of resources which a British citizen can have before they no longer qualify for social assistance under the benefit system.
>
> 45. Unfortunately, the appellant has provided no evidence to establish this and it is not open to me to assume that the support she receives from Mr O'Keeffe is above the level required.
>
> 46. I find therefore that this requirement has not been satisfied.
>
> 47. It therefore follows, from the above, that the appellant has not discharged the burden upon her to satisfy all the relevant requirements of the Regulations and so her appeal cannot succeed.
>
> 48. Accordingly, the rights of the appellant under the Regulations are not engaged."

10. Judge Coutts dismissed the appeal. The appellant appealed to the Upper Tribunal.

Permission to appeal

11. Permission to appeal was granted on the basis that the First-tier Tribunal's reasoning at [40]- [44] was arguably inadequate, with reference to the question of self-sufficiency.

Rule 24 Reply

12. There was no Rule 24 Reply on behalf of the respondent.

13. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

14. At the hearing today, Ms Holmes for the respondent said that she accepted that the evidence before the First-tier Tribunal was sufficient to establish self-sufficiency and did not wish to make any detailed submissions.

Analysis

15. I am satisfied that the reasoning in the First-tier Tribunal's decision is inadequate and/or perverse and that the decision should be set aside.

16. In the light of the concession on behalf of the respondent, I allowed the appellant's appeal at the hearing. I emphasise that I would have done so on the evidence before the Upper Tribunal, even had Ms Holmes not made that concession.

DECISION

17. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. I remake the decision by allowing the appellant's appeal.

Signed *Judith AJC Gleeson* Date: 22 July 2019

Upper Tribunal Judge Gleeson