



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

Appeal Number: IA/02234/2014

THE IMMIGRATION ACTS

Heard at: Manchester

**Decision and Reasons
Promulgated**

On: 19th December 2014

On 10th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Angela Jose Manuel

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Moksud, International Immigration Advisory Service

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Angola date of birth 15th June 1975. She appeals with permission¹ the decision of the First-tier Tribunal (Judge Simpson)² to dismiss her appeal against a refusal to issue her with a residence card in accordance with the Immigration (EEA)

¹ Permission was granted on the 7th October 2014 by First-tier Tribunal Judge Omotosho

² Promulgated on the 27th August 2014.

Regulations 2006.

2. The Appellant's case was that she is in a durable relationship with a Mr Paolo Lourenco de Sousa, a Portuguese national exercising treaty rights. The Respondent had refused the application on the grounds that there was insufficient evidence to show that Mr de Sousa was a "qualified person" under the Regulations, or that the two were in fact in a durable relationship.
3. When the matter came before the First-tier Tribunal, Judge Simpson was satisfied that Mr de Sousa was exercising treaty rights in the UK. That finding has not been the subject of any challenge by the Respondent. As to whether the Appellant was in a durable relationship with Mr de Sousa it was common ground that the Appellant was required to show that she had been co-habiting with him for a period of two years or more. Although the Tribunal accepted that the two were living together, there was found to be insufficient evidence to demonstrate that it had been for a period of two years. On that basis the appeal was dismissed.
4. The grounds of appeal are that the findings about the length of co-habitation were "not adequately reasoned" and "failed to take relevant evidence into account". It is submitted that at the date of the appeal the parties had to show co-habitation between August 2012 and August 2014. It would appear from paragraph 12 of the determination that the Judge accepted, on the basis of documentary evidence, that the Appellant had been living with Mr de Sousa from at least October 2012. She found their evidence about their current circumstances to be credible and consistent. Mr Moksud submitted that in those circumstances there did not appear to be any rational reason to reject their oral evidence that they had been living together there since 2010.

My Findings

5. It is clear from the findings of the First-tier Tribunal that the oral evidence of the relationship was found to be consistent and credible - at paragraph 11 it is described as "identical". Judge Simpson expressly accepts that from October 2012 they were living together as claimed. The difference between October 2012 and September 2012 is that in the later period there was some documentary evidence to support the parties' testimony. It follows that in respect of October there was a greater quantity of evidence than there was for September. In those circumstances the Tribunal was entitled to find the burden discharged in respect of the later period but not the former. Mr Moksud is right to say that the Tribunal could have drawn positive inferences from the rest of the evidence and allowed the appeal on the basis that the oral evidence alone was sufficient to discharge the burden of proof, but this is not the route that Judge Simpson took. That she did not do this does not amount to an error

of law. The decision was open to the Tribunal on the evidence that was before it.

6. I note that very little turns on my decision. At today's date the Appellant, if indeed she is still in a relationship with Mr de Sousa, will have been living with him since October 2012, this being the unchallenged finding of Judge Simpson. All that she need do is supply the Respondent with evidence covering the period August 2014 to date and the Respondent will no doubt exercise her discretion under Regulation 17(4)(b) and consider whether to issue a residence permit.

Decision

7. I was not asked to make a direction as to anonymity and I see no reason to make one.
8. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
27th February 2015