



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26586/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 July 2015

Determination Promulgated
On 9 July 2015

Before

UPPER TRIBUNAL JUDGE RENTON
UPPER TRIBUNAL JUDGE SMITH

Between

SOUFIANE MARCHANE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Counsel

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

DECISION AND REASONS

Background

1. This is an appeal by the Secretary of State. For ease of reference, we have referred below to the Secretary of State as respondent and Ms Marchane as appellant even though it is the Secretary of State's appeal.
2. The appellant is a citizen of Morocco. She appealed under regulation 26 of the Immigration (European Economic Area) Regulations 2006 ("the EEA

regulations”) against the respondent’s decision dated 9 June 2014 refusing to issue her a residence card as the family member of her EEA sponsor, Mr Amro Hassan (“the sponsor”).

3. Her appeal was allowed by First-Tier Tribunal Judges Reid and Scott-Baker in a Decision promulgated on 30 March 2015. The respondent sought permission to appeal on 2 grounds – that the assessment of credibility was perverse and/or failed to take material matters into account (ground 1) and that the Tribunal failed to make a finding in relation to whether the sponsor was a qualified person and had instead remitted the matter to the respondent to reconsider which it was not open to the Tribunal to do (ground 2).
4. Permission to appeal was granted by First-Tier Tribunal Judge Ransley on 28 May 2015 on both grounds.
5. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal decision involved the making of an error of law so that it should be set aside.

Decision and reasons

6. In relation to ground 1, Mr Wilding submitted that the assessment of the appellant’s and sponsor’s evidence at [13] to [24] of the decision was riddled with contradictions and material errors. This demonstrated that the Tribunal had either given little or inadequate reasoning for the discrepancies and had implied or assumed evidence to explain away issues. As a result, the assessment of the reliability of the evidence made little sense. He suggested that it did not appear that the balance of probabilities had been properly applied (although the test was noted at [10]). He submitted that the Decision gave the impression that the Tribunal was looking to excuse the discrepancies giving the appellant the benefit of the doubt. He pointed to the way in which the Tribunal had dealt with the issue of wedding venue which he said was speculative [15], catering arrangements at the wedding which imported an academic assessment in relation to cultural differences and was speculative [16] and contradictions in the evidence given by the couple in relation to what they did the previous weekend [20]. He also submitted that there was no reason to say what was included at [18] and this appeared to amount to making excuses for the appellant with no evidential foundation. Overall he submitted that these examples showed that the assessment of the evidence was manifestly unlawful.
7. In relation to ground 2, Mr Wilding submitted that the Tribunal was required to decide whether, at the date of hearing, the sponsor was a qualified person for the purposes of the EEA Regulations. This was considered at [25] to [26]. However, instead of reaching a finding in that regard, the Tribunal had purported to remit the matter to the respondent to make a decision. Either the sponsor was a qualified person or he was not. The option which the Tribunal took was not one open to it. Since the Tribunal had acknowledged that there

was no (documentary) evidence before it, the appeal should have been dismissed on that basis.

8. In response to a question from us concerning the apparent acceptance by the Tribunal of the appellant's and sponsor's credibility on this issue [26], Mr Wilding very fairly and properly accepted that it would have been open to the Tribunal to allow the appeal if it accepted that the sponsor was working as at the date of the hearing. However, reasons would need to have been given.
9. We did not need to call on Mr Gayle.
10. Having considered the grounds of appeal and Mr Wilding's oral arguments we are not satisfied that the First-tier Tribunal decision involved the making of an error of law in relation to the findings that the relationship was genuine. The Tribunal heard evidence from the appellant and her sponsor and was entitled to reach its own views on credibility. The respondent's grounds amount to no more than a disagreement with the factual findings. We are satisfied, however, that the First-Tier Tribunal made an error of law in allowing the appeal to the extent of remitting the matter to the respondent to decide whether the sponsor was a qualified person for the purposes of the EEA Regulations rather than deciding the issue for itself. We indicated our view however that it would be possible to remake the decision and to allow the appellant's appeal on the basis of the findings of the First-Tier Tribunal Judges given the credibility findings and Mr Wilding's concession. Mr Wilding indicated that, on this issue, Mr Gayle had already provided him with documents prior to the hearing which demonstrated that the sponsor was currently in employment. Those were handed in to the Tribunal. Those indicated that the sponsor had been in receipt of salary payments from 1 April to 1 July inclusive and there was a letter from the employer indicating that he commenced work in February 2015. Mr Gayle indicated that the sponsor had been training prior to March 2015 so that letter was not inconsistent with the oral evidence given to the First-Tier Tribunal.

DECISION

11. The First-tier Tribunal decision did involve the making of an error on a point of law in relation to the failure to decide whether the sponsor was a qualified person under the EEA regulations.
12. We set aside the decision remitting the matter back to the respondent. We remake the decision in the appeal by finding that the sponsor is a qualified person as at the date of the hearing before the Upper Tribunal and therefore allowing the appellant's appeal in full.

Signed
Upper Tribunal Judge Smith

Date 9 July 2015