



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

Appeal Number: IA/26644/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 January 2016**

**Decision & Reasons Promulgated
On 3 February 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR MOSES ADEBOYEJO ADEYOKUN
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms C.R. Querton of Counsel

For the respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 13 June 2014 to refuse to issue him with a residence card as an extended family member of an EEA national under regulation 8 of the Immigration (European Economic Area) Regulations 2006 (hereinafter, 'the 2006 Regulations').

2. First-tier Tribunal Judge Lucas dismissed the appellant's appeal in a decision dated 1 April 2015.
3. Permission to appeal was granted by Upper Tribunal Judge Martin on 5 November 2015 stating that it is arguable that the Judge made a mistake of fact in saying that the appellant had not established his identity when his Nigerian passport was in the respondent's bundle. The lack of identity was treated as significant by the Judge and influenced the adverse credibility findings which arguably an error of law. Permission to appeal was also granted on the basis that the Judge has arguably not given adequate reasons for finding that the appellant and his partner are not to be in a durable relationship.
4. Thus the appeal came before me.

First-tier Tribunal's findings

5. The Judge did not accept that the appellant and his EEA sponsor are in a durable or genuine relationship. The appellant's background was taken into account. The Judge noted that appellant is said to have arrived into the United Kingdom with the valid visit visa in 2008 and has overstayed since that time. There is no evidence provided at all of his lawful entry into the United Kingdom. The Judge stated that as of the date of the hearing, there is no evidence of the appellant's actual identity.
6. The appellant also made a previous application to remain in the United Kingdom on the same bases and also made an application for naturalisation in 2012. Each of these was refused because he could not and did not provide a valid identity. The Judge did not accept that the appellant's relationship is durable.

The hearing

7. At the hearing it was agreed between the parties that the appellant's identity document was not before the First-tier Tribunal. The Home Office Presenting Officer stated that the Secretary of State has potential suspicions about the appellant's identity document. The parties agreed that the appeal be sent back to the First-tier Tribunal for a decision to be made on the validity of the identification document and the durability of their relationship. Ms Querton said that since credibility of the appellant is an issue the appeal be remitted to the first-tier Tribunal for credibility findings.

Decision as to whether there is an error of law in the determination

8. I find that there is a material error of law in the determination which cannot be attributed to the Judge. The respondent was in possession of the appellant's identity document and no clear reason has emerged for why this was not before the First-tier Tribunal Judge. I therefore find that as the Judge placed a great deal of weight on the absence of an identity

document for her adverse credibility findings, the determination is not safe.

9. The Judge also concluded that there was no substance to the Article 8 claim because it is not accepted that the appellant has established a family life with the sponsor because it is not accepted that they are in a genuine and/or durable relationship. Therefore, the durability of the relationship is also an issue to be determined after the findings of fact about the validity or otherwise of the identity document produced by the appellant.
10. The credibility of the appellant's identity document and the appellant's claim that he is in a durable relationship is therefore an issue which must be determined by the First-tier Tribunal.
11. I set aside the decision of the First-tier Tribunal and direct that the appeal be placed before a Judge of the First-tier Tribunal other than Judge Lucas on the first available date.

DECISION

The appeal be remitted to the First-tier Tribunal.

Dated this 1st day of February 2016

Signed by

A Deputy Judge of the Upper Tribunal

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Mrs S Chana