



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

Appeal no: **EA/ 04777/2017**

THE IMMIGRATION ACTS

At **Field House**

Decision & Reasons
Promulgated

On **8 May 2019**

On **10 May 2019**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Carla CRENTSIL (formerly O'CONNOR)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: Mr Umar Khurram, solicitor, KCS

For the respondent: Mr Toby Lindsay

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Daniel Sills), sitting at Birmingham on 16 March, to dismiss an EEA appeal by a citizen of Jamaica, born 1972. The appellant had arrived here in Immigration, Asylum and Nationality Act 2002, and met an Irish citizen called Abeku Crentsil (the sponsor) in 2009: they had married in 2011, and in due course she had been given an EEA residence card, valid till 9 November 2016, on the basis that the sponsor was a 'qualified person' by reason of his business as a plumbing fitter and decorator.

2. On 8 November 2016 the appellant applied for permanent residence; but that was refused on 26 April 2017: the respondent was not satisfied that the sponsor had been a 'qualified person' for the five years needed, for lack of the necessary financial evidence about his business. This decision

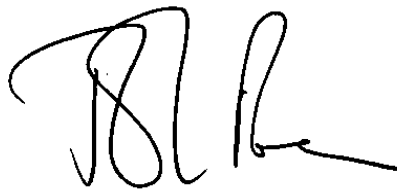
NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*

(2) *persons under 18 are referred to by initials, and must not be further identified.*

was appealed, first by another firm of solicitors, who requested a hearing in their notice of appeal. Later Mr Khurram's firm took over, and asked for the appeal to be dealt with on the papers.

3. The Home Office however did not agree to this; so the case was listed for hearing on 13 April 2018; not 16 March, as shown at the top of the decision; but the solicitors were told their attendance would be excused. On 6 April they had sent in a large (287 pp) bundle of evidence, received on the 10th, and on the 10th they faxed in a skeleton argument, received the same day.
4. At the hearing the presenting officer conceded, in the absence of the appellant or any representative that, while the documents before the decision-maker had not shown the sponsor was a 'qualified person', those received on the 10th had done so. However the judge declined to accept the concession, for clear and detailed reasons given at paragraphs 11 - 15, dealing with the material in the bundle which he considered relevant. There is no question but that the judge was entitled to do this: there was no question of giving notice to the appellant's side first, since they had been given no reason to expect the concession in the first place.
5. What the judge did not do, however, was to make any reference to the skeleton argument. This is not a particularly impressive document; but it did contain the appellant's solicitors' submissions on the material in the bundle. Bearing in mind what the judge, justifiably, said at paragraph 11 about the material in the bundle not being presented "... in a particularly user friendly format", and the fact that he was deciding the case in the (permitted) absence of the appellant's side, and contrary to a concession made by the presenting officer, I have reluctantly reached the view that he needed, simply as a matter of being seen to be fair, to deal with the skeleton argument, such as it was, before deciding the case as he did.
6. The result is that there will have to be a fresh hearing before another first-tier judge. Mr Lindsay once again did not consent to a disposal on the papers, and also withdrew the concession made at the first hearing. Given the view taken by the judge on the merits of the case, there was good reason for that withdrawal, and no reason for me not to allow it: see *NR (Jamaica)* [2009] EWCA Civ 856, paragraph 12. This time the appellant would be well advised to be present and represented at the hearing.

Appeal allowed:: first-tier decision set aside
Fresh hearing in First-tier Tribunal at Birmingham, not before Judge Sills



(a judge of the Upper
Tribunal)

Date 8 May 2019