



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

Appeal Number: IA/43562/2013

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On 23 October 2014**

**Determination  
Promulgated  
On 18 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MISS VALARIE OFILIA  
(ANONMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Blundell of Counsel

For the Respondent: Mr S Whitworth, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of the Philippines born on 23 October 1973. The appellant's appeal to the First-tier Tribunal was against the decision of the respondent dated 7 October 2013 to refuse the appellant leave to remain in the United Kingdom pursuant to the Immigration Rules and Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge in a decision dated August 2014 dismissed the appellant's appeal. First-tier Tribunal Judge Davidge refused to grant the appellant permission to appeal on 10

July 2014. Upper Tribunal Judge Perkins gave the appellant permission to appeal 11 September 2014 stating that the Judge only consider the discrepancies in the oral evidence but failed to consider the documentary evidence that demonstrated that the appellant and her sponsor were co-habiting.

2. The First-tier Tribunal Judge in his determination made the following findings which I summarise. Due to the discrepancies in the evidence of the four witnesses, the appellant has not demonstrated that she is in a subsisting relationship with her sponsor in the United Kingdom. She cannot succeed pursuant to the Immigration Rules there is nothing exceptional in her case that she should succeed under Article 8 of the European Convention on Human Rights.
3. The appellant and her grounds of appeal states the following. That the Judge should have balanced the discrepancies in the evidence of the witnesses at the hearing, which is accepted by the appellant, with the extensive documentary evidence provided which demonstrated that the parties have cohabited at the sponsor's property, 59 sent Stefan's Close Walthamstow. The Judge failed to give proper consideration to the documentary evidence and fell into material error.

### **The Error of Law Hearing**

4. I heard submissions from Mr Blundell which I summarise in brief. The appellant has accepted there were discrepancies in the witness statements. However the Judge should have also considered the documentary evidence against the discrepancies in the oral evidence. There was cogent evidence of cohabitation. The appellant and her sponsor live in a one-bedroom house. There is evidence that since 2005 the address given by the appellant to the NHS and British Gas which is the joint names as the same address as that of her sponsor.
5. Mr Whitworth made the following submissions which I summarise. The factual evidence such as cohabitation between the appellant and the sponsor has never been disputed. Mr Bose before the first-tier Tribunal withdrew his concession that the appellant and her sponsor were in a subsisting relationship in light of the inconsistent oral evidence by the appellant's witnesses. There are discrepancies such as to when they started living together and when they met.
6. In reply Mr Blundell stated that it is accepted that the appellant and her sponsor are living together but the respondent alleges that they are not in a subsisting relationship. The appellant and a sponsor live in a one-bedroom flat and have done since 2005. This is evidence of a subsisting relationship.

### **Decision on error of law**

7. The First-tier Tribunal Judge fell into material error by her failure to consider the documentary evidence provided by the appellant to demonstrate that she and her sponsor are in a subsisting relationship. She relied on inconsistencies in the oral evidence of her witnesses without considering the documentary evidence and make a decision on the evidence in the round.
8. It was accepted by the respondent at the hearing that the appellant and her sponsor are cohabiting but said that they are not in a genuine or subsisting relationship. It was accepted that the Presenting Officer before the First-tier Tribunal withdrew his concession that they were in a subsisting relationship given the inconsistencies in the oral evidence.
9. The documentary evidence on the face of it, demonstrates that the appellant and the sponsor have been living together at the same address since 2005. Mr Whitworth submitted that the respondent accepts that the appellant and his sponsor have been living together but they are not in a genuine and subsisting relationship.
10. Consequential to my finding that there is a material error of law, I set aside the determination of Judge Scott preserving none of the findings.
11. Both parties agreed in such an event, the appeal ought to be sent back to the First tier- Tribunal so that findings of fact can be made. I agreed that this was the proper course of action to take in this appeal in accordance with section 7. 2 (b) (i) the Senior President's Practice Statement of 25 September 2012 as we were of the view that the appeal requires judicial fact-finding and should to be considered by the First-tier Tribunal.
12. The re-making of the decision on appeal will be undertaken by a First-tier Judge in the First-tier Tribunal other than by First-tier Tribunal Judge Kamara on a date to be notified

### **Decision**

13. The appellant's appeal is allowed and the determination of First-tier Tribunal Judge is set aside. The case is remitted to the First-tier Tribunal for re-determination.

Signed by

A Deputy Judge of the Upper Tribunal  
Mrs Chana

Dated this 14<sup>th</sup> day of November 2014