



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

Appeal Number: IA/40230/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 01 June 2015**

**Determination
Promulgated
On 04 June 2015**

Before

**UPPER TRIBUNAL JUDGE PITT
UPPER TRIBUNAL JUDGE BLUM**

Between

**DOMINIKA ROMERO GONSALES
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

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

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Holt who, in a decision promulgated on 12/01/2015, dismissed the appeal of Ms Dominika Romero Gonsales, a national of Georgia, against a decision of the respondent to refuse to issue her a residence card pursuant to the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).

Error of law

2. The appellant claimed in her application for a residence card to be married to Mr Den Nem, a Lithuanian national exercising free movement rights in the UK as an employed person, and that they were in a genuine relationship. On 13/09/2014 Immigration Officers conducted a visit to the address given by the appellant as her residence and that of her husband. A man answered the door and, in response to questions asked by the immigration officers, said he did not know the appellant or Mr Nem. Believing the marriage to be one of convenience the application was refused under regulation 2 of the 2006 Regulations.
3. Aggrieved with this decision the appellant appealed to the First-tier Tribunal, opting for a 'paper' appeal. Her Grounds of Appeal contended that the person with whom the Immigration Officers spoke was their neighbour, Mr Andrejs Melders. It was claimed he had not understood the Immigration Officers and was not aware of the appellant's Spanish surname. Judge Holt rejected this explanation finding it 'inconceivable' that the appellant's account could be so different to that provided by the Immigration Officers. Judge Holt also took into account the fact that an oral appeal was not requested, and observed, with respect to the documentary evidence provided by the appellant relating to co-habitation, that it was common for fraudulent documents to be used in this jurisdiction.
4. In granting permission to appeal Judge of the First-tier Osborne noted that no consideration had been given by Judge Holt to a letter written by Andrejs Melders which accompanied the Notice of Appeal to the First-tier Tribunal. In this letter Mr Melders gave more details explaining that he only knew the appellant by the name 'Donna' and had been confused about her husband's name as well. This letter was a material document as it was purportedly written by the person who spoke to the Immigration Officers and contained an explanation that was not inherently implausible. In circumstances where the respondent failed to provide any other documents relating to the visit on 13/09/2014 other than the bare assertions contained in the Reasons For Refusal letter, it was incumbent on the First-tier Judge to engage with this material evidence. Mr Walker helpfully accepted that the failure of Judge Holt to take account of or make any findings in respect of this letter constituted a material error of law.

Re-making the decision

5. Having identified a material error on a point of law we decided, pursuant to section 12(2) of the Tribunals, Courts and Enforcement Act 2007, to set aside the decision of Judge Holt and remake the decision ourselves.

6. The appellant produced further evidence including a new employment contract relating to her husband and, significantly, a letter from Whipps Cross University Hospital NHS Trust, dated 15/04/2015, indicating that the appellant was 15 weeks pregnant. This evidence was not challenged by Mr Walker. In light of this evidence, and the fact that the appellant, her husband and their neighbour Mr Andrejs Melders attended the hearing, and in the absence of any other record maintained by the respondent of the visit conducted on 13/09/2014, Mr Walker conceded that there was cogent evidence that the appellant's relationship with her husband was not a marriage of convenience. We therefore allow the appeal under the 2006 Regulations.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision and re-make the decision in the appeal by allowing it.

Signed:
Upper Tribunal Judge Blum

Date: