IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/42647/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 December 2014	**On 31 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

MISS ANASTASIA DONTSOVA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Wilford, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Russia, born on 7 June 1970. She appealed the respondent's decision of 18 August 2013 to refuse to grant her a residence card for the United Kingdom on the basis that she is an extended family member of an EEA national. The appellant is the unmarried partner of Mr Dario Bevilacqua, an Italian citizen exercising treaty rights by working in the United Kingdom. The respondent was not satisfied that the appellant met the requirements of paragraph 8(5) of the Immigration (European Economic Area) Regulations 2006 of proving that

she was in a durable relationship with her EEA national sponsor. The respondent was not satisfied that she had shown that the relationship was durable as the couple had not been living together in a relationship akin to marriage for at least two years.

2. The appellant appealed and following a hearing at Nottingham, and in a determination promulgated on 22 July 2014, Judge of the First-tier Tribunal Place dismissed the appellant's appeal.

3. Albeit that the appellant's relationship preceded January 2013 the judge found that she and her partner did not "officially" move in together prior to that month. She found that the relationship became one akin to marriage when cohabitation began in Norwich in January 2013. Prior to that they were only "dating". Therefore the judge found the relationship akin to marriage lasted some eighteen months.

4. She gave consideration to the authority of **YB [2008] UKAIT 00062**. Although accepting that the two year measure in the Immigration Rules is only a "rule of thumb", the judge concluded that as the parties' relationship here fell considerably short of that measure there was a significant shortfall and accordingly the appellant had not satisfied the burden upon her to show that she is in a durable relationship with Mr Bevilacqua and therefore the decision under the EEA Regulations, made by the respondent was a correct one.

5. The appellant sought permission to appeal which was initially refused by the First-tier Tribunal. In a decision of 8 August 2014 Judge Davidge found that the grounds, whilst reflecting a disagreement with the judge's conclusions did not reveal an arguable material error of law.

6. That was not accepted by the appellant who subsequently appealed to the Upper Tribunal. Judge of the Upper Tribunal Grubb, in a decision 18 November 2014 gave the following reasons for granting permission:-

> "1. The First-tier Tribunal (Judge Place) dismissed the appellant's appeal against a refusal under the Immigration (EEA) Regulations 2006 to grant her a residence card as an "extended family member" of an EEA national exercising Treaty Rights on the basis that the parties had not established they were in a "durable relationship".
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> 2. Whilst the Judge recognised that a relationship of 2 years akin to marriage was not essential, she has arguably reached an irrational finding that the parties' 18 month relationship akin to marriage was not a "durable" one because it fell "considerably short" of the 2 year measure in the Immigration Rules. Further, it is arguable that the Judge misdirected herself by effectively equating "durable" with "duration" rather than with "sustainable".

3. For these reasons, the Judge arguably erred in law in dismissing the appellant's appeal and permission to appeal is granted."

7. Thus the matter came before me today.

8. Mr Wilford argued that it was not essential for a two year relationship akin to marriage to be a requirement and that it was arguable the judge had reached as a consequence irrational findings that the eighteen month relationship of the appellant and her partner was not a "durable" one because it fell "considerably short" of the two year measure in the Immigration Rules. He emphasised that two years was not a "cast iron" requirement. The judge had made clear findings regarding the relationship and that the appeal ought to be allowed.

9. Mr Avery submitted that the judge had properly taken into account the authority of **YB** and was entitled to come to findings that the relationship fell significantly short of what might be expected to be a durable one. He acknowledged the judge had not treated the two year period as a defined requirement but that in all the circumstances it was difficult to appreciate how the judge could have proceeded in any other way.

10. I indicated to both parties that my view was that the judge had materially erred as asserted. Both representatives invited me in those circumstances to allow the appeal to the limited extent that it be remitted back to the respondent for consideration of her discretion.

Conclusion

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

12. I set aside the decision.

13. I re-make the decision in the appeal by allowing it to the limited extent that it is now remitted back to the respondent.

14. No anonymity direction is made.

Signed Date 31 December 2014.

Deputy Upper Tribunal Judge Appleyard