



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

Appeal Number: IA/43336/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 April 2015**

**Decision & Reasons Promulgated
On 22 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MB
(ANONYMITY DIRECTION MADE/CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For MB the Appellant: Mr R Akther

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. Although this is strictly an appeal by the Secretary of State I have, for the sake of consistency, continued to refer to the parties by their original designations in the First-tier Tribunal. The Secretary of State thus continues to be called “the respondent”.
2. The Secretary of State has appealed, with permission, against the decision of First-tier Tribunal Judge Davey who, in a decision promulgated on 3 November 2014, allowed the appellant’s appeal against the respondent’s refusal on 9 October 2013 to refuse him a residence card as an extended

family member under Regulation 8 of the Immigration (EEA) Regulations 2006. The issue had been whether or not the appellant and the EEA national Miss C, a French national, had been living together in a durable and subsisting relationship. There was a further issue as to whether Miss C was a qualified person as she was, at the time of the appeal, not working due to a medical condition. The judge found that the relationship was durable and subsisting and that the medical condition was temporary. He allowed the appeal on that basis.

3. In seeking permission to appeal, the Secretary of State submitted, in essence, that the judge had not given any or adequate reasons for his decision nor did he set out the documentary evidence on which he was relying. Permission to appeal on that basis was granted on 22 December 2014. The matter thus came before me.
4. In making his submissions on the question of error of law, Mr Tarlow submitted, briefly, that he relied on the grounds and that there were no adequate reasons given in the decision to show why the appeal had been allowed.
5. In reply Mr Akther referred me to the appellant's response to the notice of appeal which had been submitted on 26 January 2015. The response requested the production of the First-tier Tribunal Judge's Record of Proceedings as evidence as to what had taken place at the hearing. A copy of the Record was indeed produced to both parties prior to the hearing before me. It was clear from the judge's notes that not only had extensive evidence been presented to the First-tier Tribunal that the couple were in a durable relationship but he also noted that the respondent had chosen not to cross-examine the appellant or his sponsor following the oral evidence given by both of them. Mr Akther submitted that, in the absence of any cross-examination, the Secretary of State must be deemed to have accepted the factual evidence that was before the judge. There was similarly further evidence before the judge that the sponsor's employer had provided a letter confirming that work was still available to her.
6. Mr Akther submitted that not only was there evidence of the sponsor's willingness and ability to go back to work but the fact was that she did indeed go back to work almost immediately after the First-tier Tribunal hearing and she is still in employment. The couple have been together since November 2012, there is a tenancy agreement in joint names and bank statements in joint names. All that information had been before the First-tier Tribunal Judge. The sponsor has been working in the UK since at least 2012 and was only temporarily off work because of needed surgery at or around the time of the hearing.
7. Having reviewed all the evidence including the documentary evidence that had been before the First-tier Tribunal Judge it is clear to me that this is an appeal by the appellant which must be allowed on its facts. It is regrettable that the First-tier Tribunal Judge failed to set out his detailed

reasons for allowing the appeal and that, of itself, is an error. But the error is of minor consequence. The Judge was entitled to treat the respondent's decision not to cross-examine the appellant or the sponsor as an indication that their evidence was accepted. It is the duty of counsel to test any parts of the evidence which are in dispute and the total failure of the Home Office Presenting Officer at the First-tier Tribunal to ask any questions at all is a clear indication of the acceptance of that evidence.

8. In any event, on the evidence, the appellant is bound to succeed in his appeal and I therefore find that the error (if any) was such that it is not necessary to set aside the original decision.

Notice of Decision

The decision of the First-tier Tribunal shall stand.

An anonymity direction was made in the First-tier Tribunal decision. That direction shall continue.

Designated Judge David Taylor
Deputy Upper Tribunal Judge
21 April 2015