



IAC-FH-CK-V1

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

Appeal Number: IA/50572/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 October 2015**

**Decision & Reasons Promulgated  
On 13 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**MR ISURU SAMPATH WEERAKOON  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Peterson, Counsel instructed by VMD Solicitors  
For the Respondent: Mr. S Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Obhi who refused the Appellant's appeal against the Respondent's decision to refuse to grant a Residence Card to the Appellant under the Immigration (European Economic Area) Regulations 2006 on the basis of his civil partnership with an EEA national.
2. Permission to appeal was granted on two grounds, first that it was arguable that the judge had failed to make findings on and/or accord weight to material evidence, namely bank accounts showing activity

consistent with joint finances, and secondly that it was arguable that the finding that the Appellant's partner was unemployed was a material error.

3. At the hearing I heard submissions from both representatives following which I announced my decision that the decision involved the making of an error on a point of law. My reasons are set out below.
4. In relation to the first ground, in paragraph [34] the judge deals with the financial arrangements of the Appellant and his partner. There is an assessment of the oral evidence of the Appellant and his partner. There is no reference in paragraph [34] to the evidence of the joint Halifax Bank account of the Appellant and his partner (page 59 of the Appellant's bundle). Neither is there any reference to the transfers between their accounts. I was referred to statements of the Appellant's partner's Lloyds Bank account (pages 60 to 72 of the Appellant's bundle), and to the Appellant's bank statements (pages 129 to 225). In assessing their financial arrangements, notwithstanding the finding that there was some vagueness in the oral evidence, the judge has not considered the documentary evidence before her at all. Paragraph [34] addresses the question of rent, and contributions made by the Appellant and his partner, without reference to their bank accounts. I find that her failure both to consider the documentary evidence before her, and her failure to give reasons for why she does not accord this evidence any weight, is an error of law.
5. In relation to the second ground, having found that there are aspects of the relationship which suggest that it is genuine, and which she sets out in paragraph [38], it is clear that the main aspect which concerns her, and about which she is not satisfied, is the fact that the Appellant and his partner do not live together [39]. She finds that there is "no real reason" why they live separately [39]. In giving her reasons for this, her first reason is "One has a job, the other does not". However this is not correct. Both the Appellant and his partner have jobs, and there was evidence of this before her. The Respondent did not refuse the Appellant's application on the grounds that his partner was not exercising Treaty Rights.
6. Secondly, the judge goes on to find that the reason given for the partner living separately from the Appellant "is not one that is sustainable. There is no evidence to support his claim that he has to live near his father." In paragraph [35], when considering living arrangements, the judge states "Although his father requires his assistance, his father is not living alone and has a girlfriend, who would presumably be available to take him to hospital appointments, but if not could arrange for the appellant's partner to attend." In paragraph [28] the judge sets out briefly the evidence of the Appellant's partner, but there is no reference to him being asked about his father's circumstances. Nor is there any indication that the Appellant's partner was asked about his father's girlfriend and whether or not she was in a position to assist him with his hospital appointments.

7. The main reason the judge gives for her finding that their relationship is not genuine is the fact that they did not live together. Her finding “One has a job, the other does not” was incorrect. Her findings relating to the Appellant’s partner, his father, and his father’s girlfriend are not reasoned, and do not appear to be based on the evidence which was before her.

**Notice of Decision**

The decision involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

No anonymity direction is made.

Signed

Date 12 October 2015

Deputy Upper Tribunal Judge Chamberlain