



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/06317/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 3 May 2016**

**Decision & Reasons
Promulgated
On 6 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**ARWA ABDALLA HUSSAIN
(NO ANONYMITY ORDER)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, instructed by Citadel Immigration Lawyers Ltd

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. At the end of the hearing I announced my decision that there was no error of law in the decision and reasons statement of First-tier Tribunal Judge C Chapman that was promulgated on 23 September 2015.
2. The appeal to the Upper Tribunal focuses on whether Judge Chapman ignored a concession made by the Presenting Officer, Mr Khalfey and thereby made findings of fact he was not entitled to make.
3. Mr Kulong, who represented the appellant before Judge Chapman, provided evidence that Mr Khalfey conceded two issues at the appeal hearing. First, it is said he conceded the issue of relationship. This had been disputed at the date of decision but subsequent DNA evidence was sufficient for the Home Office to concede this point. No issue is taken on this concession by either party.

4. The second concession is said to have related to the question of whether the appellant had provided satisfactory evidence to show she had resided continuously in the UK in accordance with the 2006 EEA Regulations. Mr Kulong asserts that Mr Khalfey conceded at the hearing that if the appellant showed she did not need to meet the requirements of regulation 8(2) as an extended family member, then the issue of dependency disappeared and no other issue need be addressed. Mr Khalfey denies making such a concession. Mr Kulong and Mr Khalfey each provided witness statements supported by their notes of the hearing. It is evident that there is a difference in what each recorded.
5. Mr Mills did not seek to suggest that Mr Kulong was lying. He (like myself) has known Mr Kulong for a number of years professionally and at most would suggest that Mr Kulong had misunderstood what had been discussed at the hearing. I observed that I had also known Mr Khalfey for a substantial period professionally as he often appears for the Home Office in appeals in the First-tier Tribunal. It is equally likely that he may not have realised the impact of what he said in discussions.
6. Even though I cannot decide which version of events I prefer, two things stand out. First, it falls to Mr Kulong to show that his version of events is more likely than not to be true. On the evidence presented I can only find that it is equally likely and so falls slightly short of the relevant standard of proof. Secondly, knowing the nature of appeal hearings, it is easy for an off the cuff remark made by one representative to be given unintended weight by the other. Where there is disagreement, it is more likely than not that there was no agreement in the first place. Of course if a concession is not clear there is no concession. For these combined reasons I find that the appellant has not established that the concession claimed was given.
7. It follows that it was open to Judge Chapman to investigate the issues of dependency and length of residence. Although the structure of his decision and reasons statement is not entirely clear and might be seen as conflating the two issues and possibly confusing the issues of whether the appellant was an extended family member rather than a relative in the direct line, when looked at as a whole his reasoning is clear. There were gaps in the evidence regarding the length of residence and those gaps could not be filled by the oral testimony of the appellant or her mother because there were good reasons to doubt the reliability of their testimony. These findings were open to Judge Chapman and since the appellant could not satisfy the requirements of the 2006 EEA Regulations regarding the issue of a permanent residence document her appeal had to be dismissed.

Decision

There is no legal error in the decision and reasons statement and the outcome is upheld.

Signed

Date 6th June 2016

Judge McCarthy

Deputy Judge of the Upper Tribunal