



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

Appeal Number: UI-2022-000526  
IA/05189/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 May 2022**

**Decision & Reasons Promulgated  
On 29 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

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

Appellant

**and**

**MR FERIT MESHI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms H Gilmour, Home Office Presenting Officer

For the Respondent: Ms K Tobin, instructed by Malik & Malik Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge O'Malley promulgated on 15 February 2022 in which the judge allowed the appeal of Mr Ferit Meshi against a decision of the Secretary of State to refuse to issue him with a residence card as confirmation of his status in the United Kingdom as the extended family member who had been the durable partner of an EEA national exercising Treaty rights.

2. The judge heard evidence from the appellant, his partner and a friend, Ms Zlatkovska, and concluded that both the witnesses were credible, consistent and concluded in her decision that although their relationship had been of some twenty months' length that this was a durable relationship and that they were in a serious committed relationship could properly be characterised as durable.
3. The Secretary of State challenged that on the basis that the judge had not adhered to the guidance and had misdirected herself in law, it being unclear how the Tribunal had reached the finding that they were in a durable relationship.
4. I find no merit in the Secretary of State's challenge and I would not have granted permission to appeal in this case. There is no requirement for a judge when assessing whether there is a durable relationship or not to follow the guidance issued by the Home Office. It is clear from the decision in YB (EEA reg 17(4) - proper approach) Ivory Coast [2008] UKAIT 62 that the approach to be taken is to look at the evidence as a whole and that the comparable provisions of the Immigration Rules from which the two years flows is a rule of thumb. There is of course a requirement for an extensive examination of the personal circumstances of the applicant or the appellant and I consider that this has been done. I consider that on the basis of the evidence before the judge she was entitled to conclude that the relationship was durable even though it was less than two years. That is not a requirement of the Regulations or for that matter the provisions of the Treaty, which are of course the relevant ground of appeal in an appeal of this nature.
5. I consider it is sufficiently clear from the decision of the judge that she accepted the evidence of the appellant, the sponsor and the other witness that this was a relationship which met all the criteria for a durable relationship. Whilst the judge does not herself refer expressly to YB, I find that there is no reason to consider that the judge had not applied the correct principles to this case. On the contrary, it is evident that she did and accordingly I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it and that concludes my decision.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

No anonymity direction is made.

Signed

Date: 10 June 2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul