



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

**Appeal Number: EA/00920/2020  
UI-2021-001464**

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC  
On the 21 November 2022**

**Decision & Reasons Promulgated  
On the 24 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON  
DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**KLISMAN SYKAJ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: none

For the Respondent: Miss Young a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Albania born on 26 May 1991. This is a rehearing of the appeal that was before First-tier Tribunal that was set aside at a hearing on 20 July 2022 dismissing his appeal against the refusal of a residence card as confirmation of a right of residence as an extended family member under Regulation 7, 8, 24, and 27 of the

Immigration (EEA) Regulations 2016 ['2016 Regulations']. That error or law decision sets out the history of the matter which we will not repeat. We make no anonymity direction given the principle of open justice.

2. We issued directions subsequent to that hearing as follows.
  1. The representatives were to seek to agree a schedule of agreed facts, disputed facts, and relevant law. Miss Young prepared such a document on 8 August 2022. Mr Toal, who represented the Appellant on 20 July 2022, does not appear to have engaged with the process other than emailing on 8 August 2022 to say he was on holiday and aimed to respond substantively during the week beginning 15 August.
  2. We directed that the Appellant through his representatives respond to the Respondent's proposed schedule of agreed facts, disputed facts, and relevant law by 17 October 2022. If no response was received by that date, the Appellant was deemed to accept the contents of the schedule in full.
  3. We directed that any further evidence that is to be relied upon was to be filed and served by 28 October 2022.
  4. We directed that the hearing be relisted on the first available date on or after 7 November 2022 with a time estimate of 1 day. If an interpreter is required, the Appellant's Solicitor was to notify the Upper Tribunal by 28 October 2022 which language is required.
3. There has been no communication from the Appellant or his representatives since 8 August 2022. Neither attended the hearing on 21 November 2022 by the time it was called on at 10.25am. We were satisfied having checked the electronic file that on 27 October 2022 they were served with the notice of hearing which set out the date time and venue of the hearing. No application was been made to adjourn the hearing and no explanation for the lack of attendance. Accordingly, bearing in mind rule 2 of The Tribunal Procedure (Upper Tribunal) Rules 2008 we determined it was appropriate to hear the appeal in their absence.

### **The Schedule of issues**

4. The unchallenged schedule of issues as prepared by Miss Young is as follows.
  1. **Immigration history**
    - The Appellant claims to have entered the UK clandestinely in 2011.

- On 15 May 2015, the Appellant first came to the attention of the authorities when he was arrested for possession of class A drugs (cocaine) with intent to supply.
- On 28 July 2015, he was convicted of possession of class A drugs (cocaine) with intent to supply and sentenced to three years imprisonment.
- On 6 April 2015, he was notified of your liability to deportation from the UK.
- On 9 December 2015, he was served a Deportation Order.
- On 18 February 2016, he was deported from the UK under the Facilitated Removal Scheme/ Early Removal Scheme.
- The Appellant claims to have re-entered the UK in breach of his Deportation Order in 2018.
- On 20 August 2019, he was arrested following an enforcement visit to his home address, 3 Nineveh Gardens, LS11 9QF.
- On 21 August 2019, he was served with illegal entry paperwork return in breach of deportation order.
- On 23 August 2019, he claimed asylum and this was refused on 3 December 2019 with no right of appeal.
- On 9 September and 9 October 2019, he applied for a residence card as the unmarried partner of the EEA national, Raluca Stolcan. However, these applications were rejected.
- On 20 November 2019 he applied for a residence card as an Extended Family Member (unmarried partner of an EEA National) which was refused on 20 January 2020. He lodged an appeal against this decision on 27 January 2020.

## **2. Agreed Facts**

- The Appellant is a national of Albania.
- The Appellant's date of birth is 26 May 1991.
- The Appellant was approached in March/ April 2015 by two men to participate in the supply of cocaine when he was in a position of vulnerability [NRM negative Reasonable Grounds decision dated 2.3.2020].

- The Single Competent Authority made a negative Reasonable Grounds decision as it was not accepted the Appellant was subjected to forced criminality, nor was there an intention to subject the Appellant to this. It was concluded the appellant worked for the two men out of financial necessity [NRM negative Reasonable Grounds decision dated 2.3.2020].
- The Appellant and Ms Stoican married on 31.3.2021 in accordance with the matrimonial laws of England and Wales [marriage certificate dated 26.4.2021, A's supplementary bundle page 31].

### **3. Disputed Facts**

- Sometime in November 2019, the Appellant and Ms Stoican approached the Registrar of Marriages with a view to give Notice of Intention to Marry and are informed that there is a 6-month waiting period for Notices of Intention to Marry.

The Respondent does not accept this fact as according to [paragraph 39, Appellant's witness statement, page 8 appellant's bundle], the Appellant did not propose until February 2020. There is reference to the Registry office at paragraphs 41 & 42 but seems to suggest those events followed the proposal not before. There is no documentary evidence from the Registry office. In any event, the Respondent submits it is with respect, irrelevant as it the marriage took place after the relevant date as raised in the Error of Law hearing.

### **4. Preserved Findings**

The Respondent is of the view that the following findings should be preserved:

- a. The Appellant and the EEA national, Ms Stoican are in a genuine and subsisting durable relationship [47] (FTT determination).
- b. Ms Stoican is a qualified person [47].
- c. The Appellant and Ms Stoican are unreliable witnesses [44].
- d. The Appellant has failed to demonstrate his account of being pursued by a criminal mafia style gang in Albania is true and that he has lied about his claim [44].
- e. The Appellant has not shown to the lower standard that he was forced into drug selling or that he was subject to any form of trafficking or slavery [44].
- f. The Appellant and Ms Stoican have not given a reliable and honest account of the Appellant's use of the Italian identity

document, his presence in the United Kingdom or his work record throughout [44].

g. The Appellant has not demonstrated any reliable evidence of any remorse for his criminal offending and his use of the Italian passport indicates he is not reformed in any capacity [44].

h. The FTTJ did not accept the appellant now sought to have a legitimate life and consider Ms Stoican had not told the truth about what she knew or knows about working in the United Kingdom and would effectively say anything to support the Appellant [44].

i. The Appellant has failed to rebut the statutory presumption under s72 of the Nationality, Immigration and Asylum Act 2002 [46].

The Respondent submits that the appellant did not seek to challenge the findings at [44] and [46] within the grounds of appeal and therefore the findings should be preserved.

## **5. Issues for the Upper Tribunal to determine**

Unfortunately, the parties have not agreed a complete schedule of issues due to the non-engagement by the Appellant.

### **Appellant's schedule of issues**

a. was the decision to refuse a residence card to the Appellant as the unmarried partner of a qualified person a breach of his rights under the EU Treaties as far as they were applicable to things done during the transition period;

b. would removal of the Appellant from the United Kingdom breach his and his wife's right to respect for their private and family life so as to breach article 8 of the ECHR;

c. was the Appellant in fact a victim of trafficking when he became involved in the supply of cocaine leading to his conviction in 2015? Would his removal from the United Kingdom breach the United Kingdom's obligations to him as a victim of trafficking under article 4 of the ECHR?

### **Respondent's Schedule of Issues**

a. Is the Appellant's deportation contrary to the UK's obligations under Article 8 of the Human Rights Convention?

b. Does Ms Stoican have settled status under EUSS in order to be a qualifying partner for the purposes of 399 (b) of the immigration rules?

## **Submissions**

7. Miss Young submitted that, in accordance with Pavandeep Virk and others v Secretary of State for the Home Department [2013] EWCA Civ 652, as the Judicial Review application regarding the certification of the asylum had been certified as manifestly unfounded pursuant to s94 of the Nationality, Immigration, and Asylum Act 2002, there is no right of appeal against the refusal of the asylum claim, but even if consideration was required in relation to those issues, the unchallenged preserved findings rejected them.
8. Discretion within the EEA Regulations should not be exercised for these reasons. The protection claim was rejected. He has not been trafficked. He has shown an ongoing and longstanding blatant disregard for immigration laws by entering illegally in 2011 and again in 2018 in breach of a deportation order, and used a false passport in August 2019 to seek to persuade immigration officers he was someone else.

### **Findings**

9. The Appellant is in a durable relationship with an EEA national. Ms Stoican has however failed to establish she has settled status under EUSS in order to be a qualifying partner for the purposes of 399 (b) of the immigration rules as neither she nor the Appellant attended to have their evidence tested, and we do not have to accept what is said in the papers just because it is in a statement. We are not therefore satisfied that;
  - (1) the relationship was formed at a time when the Appellant was in the United Kingdom lawfully,
  - (2) the relationship was formed at a time when his immigration status was not precarious, and
  - (3) it has been established given the lack of evidence, that Ms Stoican cannot move to Albania to be with the Appellant or that he cannot move to Romania to be with her, or that either would present any problems for either of them, or consequently that there is cogent evidence it would be unduly harsh for Ms Stoican to live in Albania because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM, or that it would be unduly harsh for Ms Stoican to remain here without the Appellant.
10. We agree with Miss Young, pursuant to Virk, that there is no right of appeal following the Judicial Review refusal. In any event, even if we are wrong in that we accept that the findings regarding the protection appeal would be preserved given the lack of challenge to them. Whether or not the Appellant had the right of appeal against the certification in those circumstances is academic.
11. The Appellant has been found not to be a victim of trafficking.

12. The Appellant is the subject of a deportation order and showed a blatant disregard for immigration law by entering the United Kingdom in breach of that when he had no protection or trafficking issues. That disregard of immigration laws is longstanding given his entering illegally in 2011 and 2018 and his use of a passport to which he was not entitled in an attempt to deceive immigration officers in 2019. In light of that longstanding history and his criminality, we accept that discretion should not have been exercised in his favour and the Respondent was not only entitled to refuse to issue a Residence Card but correct to do so. The decision to refuse a residence card to the Appellant as the unmarried partner of a qualified person does not therefore breach his rights under the EU Treaties.
13. Had we been required to assess whether the Appellant's behaviour in relation to his criminality and blatant disregard for immigration laws ran contrary to a fundamental interest of society we would have found that it did, and that it presented a present and real danger to that fundamental interest given the length of time the behaviour has lasted, the comparatively very brief time he has had since returning illegally, and the lack of rehabilitation as evidenced by the lack of remorse.
14. We are therefore not satisfied that removal of the Appellant from the United Kingdom would breach his or his wife's right to respect for their private and family life so as to breach article 8 of the ECHR.

## **Decision**

15. We substitute the decision of the First-tier Tribunal. We dismiss the appeal.

*Laurence Saffer*

Signed  
Deputy Upper Tribunal Judge Saffer

Date: 22 November 2022