



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001740
First-tier Tribunal No:
EA/50103/2019
IA/00583/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Fabion Matoshi
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Dhanji, counsel instructed by Malik & Malik Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 18 May 2023

DECISION AND REASONS

1. The appellant is a national of Albania. The appellant arrived in the UK unlawfully on 22nd March 2017. On 13th November 2020, he applied for a residence card to confirm he is a family member of an EEA national exercising treaty rights in the UK. The application was refused by the respondent for reasons set out in a decision dated 8 January 2021. The appellant's appeal against that decision was dismissed by First-tier Judge Parkes for reasons set out in a decision dated 25 October 2021. The

appellant was granted permission to appeal to the Upper Tribunal. The decision of First-tier Tribunal Judge Parkes was set aside for reasons set out in my error of law decision promulgated on 27 March 2023. I directed that the decision will be remade in the Upper Tribunal. The appeal was listed for hearing before me.

The evidence and the hearing before me

2. The appellant attended the hearing. Mr Dhanji confirmed the evidence relied upon by the appellant is set out in a consolidated bundle comprising of 142 pages that has been filed and served in accordance with the directions set out in my error of law decision.
3. At the outset, Mr Dhanji also drew my attention to a further statement that has been made by the appellant that is dated 17 May 2023. In light of the content of that most recent statement, Mr Dhanji applied for an adjournment. He submits the appellant and Ms Mendonca are experiencing some issues in their relationship and Ms Mendonca has not attended to give evidence in support of the appeal. Mr Dhanji submits the hearing should be adjourned to give the appellant and Ms Mendonca an opportunity to work through their differences and for arrangements to be made for Ms Mendonca to attend the hearing and support the appeal. Mr Dhanji was unable to provide any further information regarding the breakdown of the relationship and why the statement of the appellant and the application for an adjournment was left until the last minute.
4. I refused the application for an adjournment. The underlying decision that is the subject of this appeal is dated as far back as 8th January 2021 and the issues before me are abundantly clear from that decision and my previous error of law decision promulgated on 27th March 2023. Notice of the hearing listed before me was sent to the parties on 21st April 2023. The further witness statement of the appellant in which he maintains that his relationship with Ms Mendonca is genuine and subsisting and in which he explains that Ms Mendonca has asked him to give her some time because of his actions is in very general terms. He states the Tribunal should adjourn the hearing for a couple of months to allow Ms Mendonca the time she needs to heal before the appeal is heard. Although I accept the evidence of Ms Mendonca is likely to be important, there is no letter or statement from Ms Mendonca explaining her absence and there is nothing to suggest that even if an adjournment were granted, Ms Mendonca would attend the hearing on the next occasion. The overriding objective is to enable the Tribunal to deal with cases fairly and justly. The appellant has been represented throughout and has been able to participate fully in the proceedings. An adjournment would only serve to add unnecessary delay that is in all the circumstances unwarranted.
5. The appellant was called to give evidence. He adopted his witness statements dated 26 May 2021 and 17 May 2023 and confirmed the content of those statements are true and correct. In cross-examination he acknowledged that the respondent does not accept that he is in a durable relationship with Ms Mendonca. He maintained that he is in a relationship

with her and confirmed that she is aware that if this appeal is unsuccessful, he faces the prospect of removal to Albania. He said that Ms Mendonca would be unable to live with him in Albania because of her connections to the UK. Asked why she had not attended the hearing of the appeal knowing of the potential risk that the appeal would be unsuccessful, the appellant explained that Ms Mendonca is upset with him and they have been arguing. She thinks that he has been cheating on her, and that is why they have been arguing. He said that they are working on their relationship.

6. In re-examination the appellant was asked whether he has in fact been cheating on Ms Mendonca. He replied “no”, but like normal couples, they have been arguing. He said that he last spoke to Ms Mendonca “a few days” or “a week ago” and they are going to “meet this weekend”. He confirmed that he still considers himself to be in a relationship with Ms Mendonca.
7. The submissions made by each of the representatives are a matter of record. In summary, Mr Lawson adopted the respondent’s decision and submits the only evidence before the Tribunal regarding the appellant’s relationship with Ms Mendonca is the evidence of the appellant and the written evidence that it is in the appellant’s bundle. The evidence might be capable of supporting a conclusion that the appellant and Ms Mendonca have at times lived in the same property and provided support to each other, but that is not to say they are in a durable relationship. Ms Mendonca has failed to attend the hearing so that the evidence regarding the appellant’s relationship with her can be tested in cross-examination. Similarly, the appellant’s cousins have failed to attend the hearing and Mr Lawson invites me to attach little weight to that evidence. Mr Lawson drew my attention to various authorities including Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC) and Saeed (Deception, knowledge, marriage of convenience) [2022] UKUT 18 (IAC) that concern sham marriages and marriages of convenience. Here, Mr Lawson submits the appellant and Ms Mendonca have never married and the relationship claimed can properly be described as a ‘relationship of convenience’.
8. In reply Mr Dhanji submits the issue in this appeal is whether the appellant and Ms Mendonca are in a durable relationship for the purposes of Regulation 8(5) of the 2016 regulations. He submits there is a wealth of evidence before the Tribunal that establishes the appellant and Ms Mendonca have been in a relationship since 2018 and that they started cohabiting in 2019. There is extensive evidence that they have lived together at various addresses and the evidence that the appellant has played a role in the life of Ms Mendonca’s son, demonstrates they are in a durable relationship. Mr Dhanji submits there is evidence before the Tribunal that the relationship has continued for some time. He acknowledges there is a gap in the evidence and that is because Ms Mendonca fears that the appellant has cheated on her. The appellant

maintains the relationship continues and they are working through their problems notwithstanding the recent difficulties.

Decision

9. The issue this appeal is whether the appellant is the partner of, and in a durable relationship with Ms Rosa Mendonca so that he is an 'extended family member' within the meaning set out in Regulation 8(5) of the Immigration (European Economic Area) Regulations 2016. Neither Council Directive 2004/38/EC nor the 2016 Regulations provide a definition of 'durable relationship'. It is for the appellant to establish, on a balance of probabilities, his entitlement to an EEA Residence Card in accordance with the Regulations.
10. In YB (EEA reg 17(4) - proper approach) Ivory Coast [2008] UKAIT 00062, the Upper Tribunal confirmed that a decision as to whether to issue a residence card to an extended family member of an EEA national requires an extensive examination of the personal circumstances of the appellant. I must first determine whether the appellant qualifies as an extended family member under Regulation 8 as a durable partner. The definition of a 'partner' set out in Appendix FM of the Immigration Rules as a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, is no more than a rule of thumb as to what requirements the appellant should normally be expected to meet. The fact that a person meets or does not meet the requirements of the relevant immigration rules cannot be treated as determinative of the question of whether a residence card should or should not be issued.
11. In reaching my decision I have considered all the evidence and material before the Tribunal and the submissions made by Mr Lawson and Mr Dhanji. I have had the opportunity of hearing the appellant give evidence, and seeing his evidence tested in cross-examination. I have also borne in mind the fact that events that may have occurred some time ago can impact on an individual's ability to recall exact circumstances. I have considered the appellant's evidence and the story as a whole, against the available material and other familiar factors, such as consistency with what the appellant has said before, the evidence of others and the documents relied upon, albeit limited.
12. The appellant and Ms Mendonca are well aware that the respondent does not accept they have provided sufficient evidence to establish they are in a durable relationship. The respondent considered the evidence relied upon by the appellant in support of his application and concluded that the appellant had not provided adequate evidence to show that he is in a durable relationship with Ms Mendonca. The respondent noted Ms Mendonca was previously married to another non-EEA national, and that the documents relied upon do not show that the appellant and Ms Mendonca are anything more than housemates, or that the appellant is anything more than a 'family friend'.

13. Ms Mendonca did not attend the hearing of the appeal before me. Although the oral evidence of the appellant was brief, I have concerns about his evidence such that I attach little weight to it.
14. In order to explain the absence of Ms Mendonca at the hearing of the appeal, the appellant has signed a statement dated 17 May 2023. He claims that like any normal couple, they have their ups and downs, and at the moment they are having some issues that stem from actions on his part, as a result of which she is unhappy with him. The appellant maintains that as far as he is concerned, they remain in a relationship. The appellant's statement dated 17 May 2023 is very vague and in general regarding the current difficulties he claims he and Ms Mendonca are experiences. He does not for example give any information as to when the current difficulties began, and the difficulties or impact that this has had upon their living arrangements. I simply have no evidence before me as to the duration and extent of the claimed difficulties in the relationship.
15. In his oral evidence, the appellant maintained that Ms Mendonca has not attended the hearing of the appeal because they have been arguing and she is upset with him. He said that she thinks he has been cheating, and that is why they have been arguing, but they are working on their relationship. There are aspects of the appellant's evidence that are inconsistent and simply do not withstand scrutiny:
 - a. In his witness statement dated 17 May 2023 the appellant claims at paragraph [3], that Ms Mendonca is upset with him because he cheated on her, and she found out. He expresses the hope she can find it in her heart to forgive him. However when asked in re-examination whether he has cheated on Ms Mendonca, the appellant said "No". He tried to give the impression that Ms Mendonca believes that he had cheated on her when he has not.
 - b. As I have already said, in his witness statement the appellant fails to give any information as to when the current difficulties they are experiences began, and the difficulties that this has caused with regard to their living arrangements. The appellant has maintained throughout that most recently he has been living with Ms Mendonca and her son at an address on Plantain Road. He did not claim in his most recent witness statement or in his oral evidence that either he or Ms Mendonca and her son have vacated that property. At the outset of his oral evidence, he confirmed that is the address at which he is living. However, rather curiously, in his evidence before me he said that he last spoke to Ms Mendonca "*a few days or a week ago*" and went on to say that they "*have been fighting as she is upset*" and that they are "*talking and going to meet this weekend*". If they are "*going to meet this weekend*", they are clearly not living together. If there has been a recent separation in the living arrangements, I have no evidence before me of when that separation occurred.

- c. At my request, Mr Dhanji asked the appellant about the two letters that have been provided by his cousin's, Ms Alba Matoshi, and Mr Arber Matoshi that are to be found at pages 27 and 29 of the appellant's consolidated bundle. The appellant was asked why his cousins had not attended the hearing. He said that he did not know they needed to attend and he did not ask them to. The appellant and his representatives are aware of the issue that lies at the heart of this appeal. It is not credible that the authors of letters who attest to the appellant's relationship with Ms Mendonca should not be asked to attend the hearing of the appeal, particularly in circumstances where the appellant and his representatives are aware that Ms Mendonca would not attend.
16. The appellant acknowledged in his oral evidence that Ms Mendonca is aware that in the event that his appeal is unsuccessful, the appellant may have to return to Albania. If, as the appellant claims, their relationship is a genuine and durable one, it is in my judgment surprising that she has not provided any evidence to the Tribunal regarding the current difficulties that she and the appellant are experiencing, and why she feels unable to attend the hearing and support the appeal. The impact of an unsuccessful appeal upon her and her son, will be significant.
17. In any event I considered the matters set out in the witness statements of the appellant and Ms Mendonca, together with the other evidence that is before the Tribunal and identified in the skeleton argument settled by Mr Dhanji. The appellant and Ms Mendonca have made statements in which they set out in general terms, the background to their relationship. They both claim they met through a dating site called Badoo and both give a broadly consistent written account of how their relationship developed. The failure of Ms Mendonca to attend the hearing of the appeal means however that there has been no opportunity to test their account of their relationship.
18. As I have already said, there are features of the appellant's written account that are undermined by the limited oral evidence I have heard. There are also aspects of the written statement of Ms Mendonca that are inconsistent with other evidence before me, such that in the absence of any opportunity to test her evidence, I attach little weight to her evidence. In her statement, at paragraph [15], Ms Mendonca claims they are in a genuine relationship, but are taking it slow because of her previous relationship and she does not want to rush into marriage again. At paragraph [17], Ms Mendonca claims she hopes to meet the rest of the appellant's family one day as they are all in Albania. At paragraph [19] she claims that she has met "*a few of his friends*", but they only meet them when they go out to restaurants. She claims she and the appellant spend a lot of time together, and do not socialise much. Although Ms Mendonca refers to the appellant's friends, she makes no reference in her statement to the appellant's cousins, Alba Matoshi or Arber Matoshi. The appellant's cousins have provided letters in support of the appeal that are

in very general terms. In the letters that they have provided in support of the appeal:

- a. Alba Matoshi claims that she visited the appellant at least once a month and she noticed that he and Ms Mendonca were growing closer. She claims she was not surprised when the appellant told her that they were going to start living together. She claims Ms Mendonca has been very close to her and her brother, and she has enjoyed getting to know Ms Mendonca by going out with her every once in awhile. She claims they have grown very close and Ms Mendonca has integrated seamlessly into the family.
- b. Arber Matoshi claims he considers Ms Mendonca to be family and enjoys spending time with them. He claims, *"They always invite me to their celebrations and we also meet almost every weekend for drinks."*

19. The evidence before me is very vague and not entirely consistent, In the absence of any opportunity to see the evidence of Ms Mendonca and the appellant's cousins tested in cross examination, I attach little weight to the written statement of Ms Mendonca and the letters from the appellant's cousins.
20. I note that in his application for an EEA residence card, the appellant claimed that he first met the sponsor in August 2018 and their relationship commenced in September 2018. He said they started living together in September 2018; [Respondent's bundle/page 29]. That is at odds with the claim made by the appellant in paragraph [9] of his witness statement dated 26th May 2021 that Ms Mendonca asked him if he wanted to move in, in 2019 and that they moved into a two-bedroom flat together in July 2019. The appellant's account is repeated in paragraph [10] of the witness statement of Ms Mendonca.
21. There is no evidence before me of the appellant and Ms Mendonca having lived together at any address prior to July 2019. In the evidence before me, I have a copy of a tenancy agreement dated 5 June 2019; [Appellant's bundle/page 66]. The tenancy agreement shows the landlord to be Ms G Murphy and the tenant to be Ms Mendonca. The Agent is Walton and Allen Lettings Ltd. The agreement concerns an address in Brook Court, Player Street and the rent is said to be £600 pcm. A deposit of £721 was due and the number of permitted occupiers is said to be "1". There is no evidence before me of the payment of the deposit by Ms Mendonca or of the regular payment of rent and other outgoings by her.
22. I accept there is evidence before me of various utility bills addressed to the appellant and Ms Mendonca at that address. They include a Council Tax bill for the year 2019/20, and Severn Trent water bills. There is also a letter addressed to the appellant at that address relating to the TV licence; [See Appellant's bundle/pages 86, 89 90, 98, 102, 103 and 107]. The utility bills that I have referred to are prima facie evidence that the appellant and Ms Mendonca may have shared some interest in that

address, between July 2019 and June 2020, but that is not to say that they were in a durable relationship during that period. I describe it as some shared interest in that address because although I accept Ms Mendonca had some legal liability under the terms of the tenancy agreement and in respect of the utility bills, in my judgement, the arrangement was one of convenience and I do not accept they lived together at that address:

- a. There is no evidence before me in the form of bank statements etc, to confirm Ms Mendonca paid the rent or any outgoings for relating to that property.
- b. I have in the evidence before me, bank statements relating to a Lloyds Bank Account held by Ms Mendonca (*account number ***60*). The statements at pages 47 to 52 of the appellant's bundle relate to the period 3 August 2020 to 2 November 2020 (*i.e. after the appellant and Ms Mendonca left Apartment 57 and moved into another address*), but state Ms Mendonca's address to be an address in Sincil Bank, Lincoln. Without further explanation, I reject her claim that she forgot to change her address with the bank.
- c. Before entering into a tenancy agreement in respect of the address in Brook Court, Ms Mendonca lived in Lincoln with her son who was born on 25th December 2015 and was about 3½ years old in July 2019. Ms Mendonca claims, and I accept, she was working in Lincoln. I do not however accept that she travelled from Nottingham to Lincoln by train and that she would normally take her son with her. The appellant has no substantial connections to Nottingham, whereas Ms Mendonca works in Lincoln and her son, according to her, has good and substantial contact with his father. Without any explanation, it is difficult to see why Ms Mendonca would have chosen to move to Nottingham with all the associated disruption that would cause, particularly to her young son.
- d. There is no evidence before me of the regular costs of commuting between Nottingham and Lincoln and I find it is more likely that Ms Mendonca continued to live at the address in Lincoln shown on her bank statements.

23. I note that in his application for an EEA residence card, the appellant claimed that he lived at the address in Brook court until 27 June 2020. A copy of the tenancy agreement relating to the address in Plantain Road is not in the appellant's consolidated bundle. Again, I accept there is evidence before me of various utility bills addressed to the appellant and Ms Mendonca at that address. They include a Council Tax bill for the year 2020/21, and Scottish Power payment reminders. There is also a letter addressed to the appellant at that address relating to the TV licence. The utility bills that I have referred to are again prima facie evidence that the appellant and Ms Mendonca may have shared some interest in that address, since June 2020. Again, that is not to say that they were in a durable relationship during that period and continue to be in a durable relationship.

24. There is little evidence before me of any real and durable commitment to each other or of a life together akin to a marriage. The appellant claims Ms Mendonca has always been the breadwinner and whilst I accept the appellant's ability to earn an income is restricted by his immigration status it is difficult to decipher from the bank statements or evidence before me, any regular pattern of financial support provided by Ms Mendonca to the appellant. I note the appellant is referred to as a 'nominated adult' by the school attended by Ms Mendonca's son, but that adds little. A good friend, who is prepared to step in when necessary could also be referred to culturally as an 'uncle' and named as a 'nominated adult'.
25. I have also carefully considered the photographs and exchange of messages between the appellant and Ms Mendonca that are before me. I accept there are photographs of the appellant with Ms Mendonca and occasionally, with her son. The dates of the exchange of messages (including the year) are not always apparent and in the absence of any elaboration, they are difficult to put in context. Some of the exchanges show some relationship between the appellant and Ms Mendonca but equally a number of them are the type of social media conversation one might expect between acquaintances. The photographs and exchange of messages do not themselves demonstrate the appellant and Ms Mendonca are in a relationship akin to marriage or that they are in a durable relationship.
26. I have stepped back and considered all the evidence before me in the round. As Mr Dhanji quite properly acknowledges, there are gaps in the evidence. Beyond the assertions made in the witness statements (*that I attach little weight to*) there is little evidence before me of any real commitment between the two of them that persuades me that they have been living together in the way that they claim or that they are in a relationship similar to a marriage.
27. It follows I do not accept they are in a durable relationship and I dismiss the appeal.

Notice of Decision

28. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 May 2023

