



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

Appeal Number: UI-2022-002535  
(EA/50164/2021); IA/03592/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 November 2022**

**Decision & Reasons Promulgated  
On 12 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES  
DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**Mr ROMAN SITIAEV**  
(NO ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of the United States of America, born on 13 January 1970. He appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Bart-Stewart (“the Judge”), sitting at Taylor House, dismissing his appeal against a decision of the respondent dated 19 January 2021 refusing his application for a Residence Card by reference to Regulation 8(5) of the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”).

## Background

2. The appellant applied for a residence card on 27 October 2020 on the basis that he was in a durable relationship with his unmarried partner, Ms Anna Izabella Gryz, a Polish national born on 16 July 1970 (“the sponsor”). The respondent refused the application on the basis of the appellant had not provided adequate evidence to demonstrate he was in a durable relationship with the sponsor. They claimed to have been residing together since June 2020 but, in support of the application, the appellant had submitted an array of letters addressed separately to both himself and the sponsor. The respondent expected to see evidence of joint financial responsibilities and concluded the evidence submitted indicated at best a shared household.
3. The appellant submitted an appeal under Regulation 36 of the EEA Regulations, arguing the respondent had failed to give consideration the evidence submitted with the application. The appeal was heard by the Judge on 18 March 2022. She noted that the appellant had married the sponsor on 15 May 2021. The Judge noted that the marriage had taken place after the United Kingdom’s withdrawal from the European Union and an application had not been made prior to the specified date of 31 December 2020 when the EEA Regulations were revoked. She therefore ruled that the appellant could not rely on Regulation 7 of the EEA Regulations in his appeal. No challenge was pursued against the Judge’s decision in this respect.
4. The judge heard oral evidence from the appellant and the sponsor. She heard evidence from a friend of the couple and she heard closing submissions from the representatives. Having done so, the Judge was not satisfied that the appellant and the sponsor were living at the same address or that they were in a durable relationship, notwithstanding the fact of the marriage. She did not consider the explanation offered as to why appellant would leave his mother, to whom he provided care, to live in a shared house with the sponsor to be credible. There was a discrepancy as between the appellant’s mother’s statement and the witnesses as to whether she had attended the wedding. Furthermore, the evidence provided had not been continuous from the time of the application. The Judge stated that she was not satisfied that the appellant was in a genuine durable relationship with the sponsor.
5. Grounds seeking permission to appeal were drafted by counsel who appeared in the First-tier Tribunal. In summary these argued that (1) the Judge erred in concluding that regulation 7 did not apply, (2) the Judge erred by opening the issue of genuineness, which had not formed part of the refusal, (3) the Judge erred by misapplying the burden of proof in relation to the genuineness issue, and (4) the Judge erred by not considering all the documentary evidence of cohabitation, by not permitting the appellant to deal with points relied on by the Judge and by placing too much weight on the length of cohabitation. Permission to appeal was granted by the First-tier Tribunal on all grounds.

6. No rule 24 response has been filed.

## Hearing

7. At the hearing before us, Ms Jones and Mr Walker appeared in person at Field House. The appellant and the sponsor also attended.

## Error of law

8. Ms Jones indicated at the outset that she accepted the appellant could not rely on Regulation 7 (Ground 1). She also accepted that, in the light of the decision in Elais (fairness and extended family members) [2022] UKUT 00300 (IAC), she would be in difficulties in arguing that the Judge had erred by misapplying the burden of proof in concluding that the appellant had not shown that his relationship was genuine (Ground 2). She argued that the fact of the marriage could be relied on by the appellant as evidence of the durable relationship albeit the marriage had taken place subsequently. She argued that the Judge had fallen into error by failing to do so. She submitted that the Judge's decision showed that she only considered the marriage to the extent that she ruled that the appellant could not succeed under Regulation 7. She had not taken it into account in reasoning that she was not satisfied the appellant and the sponsor were in a durable relationship. In effect, Ms Jones relied on Grounds 3 and 4 but with emphasis on the marriage point. She did not pursue the fairness point.
9. Mr Walker submitted that the Judge had taken account of all the necessary evidence in coming to her decision and she was entitled to find it had not been adequate to discharge the burden of proof. There was no material error in the decision.
10. Ms Jones acknowledged that, had the couple not been married at the date of the hearing, the decision could not be challenged.
11. Having carefully considered the submissions made to us, we are not satisfied the Judge made a material error of law. The appellant now relies on a single ground, which is that the Judge failed to take into account a relevant matter, namely the fact the couple had married, when rejecting the claim that they were in a durable relationship. We agree with Ms Jones that the fact of the marriage was a relevant factor and we would say that it was a factor potentially capable of carrying significant weight. However, the Judge's task was to weigh all the evidence in order to determine whether the appellant had shown it was more probable than not that he was in a durable relationship with the sponsor. We agree with Mr Walker that the decision as a whole shows the Judge did so. The Judge heard oral evidence and we would be slow to interfere with her findings of fact absent a clear indication that she had erred in her approach.

12. The appellant had submitted documentary evidence and called oral evidence. The Judge plainly had regard to this. She considered the oral evidence of the appellant and the sponsor and set out the relevant parts at [11] to [16] under the heading Preliminary Matter. She noted the witness's evidence at [17]. The Judge's record of the oral evidence of the appellant, sponsor and witness all mention the wedding ([11], [15], [16] and [17]). The Judge recorded that both representatives referred to the marriage in their submissions ([18 and [19]). The Judge referred to the marriage again at [22] under the heading Findings and Reasons.
13. The Judge considered the relevant legal provisions at [22] to [25] and set out her main reasons for rejecting the claim under Regulation 8(5) at [25] to [28]. The reasoning is brief but, in our judgement, adequate. She noted a number of adverse matters, such as the paucity of evidence submitted with the application showing the couple were in a relationship, the sponsor's lack of knowledge of the appellant's circumstances despite claiming they had moved in together shortly after meeting, inconsistencies as to the sponsor's address in some of the letters submitted, the lack of a credible explanation as to why the appellant would leave his disabled mother to move in with the sponsor and the discrepancy as to whether his mother had attended the wedding.
14. We find it significant the Judge made reference at [27] to evidence of the wedding at this point in her reasoning because it is impossible to consider that she was not fully conscious of the fact of the marriage when considering the evidence of a durable relationship. We therefore find that Grounds 3 and 4 fail to disclose a material error in the decision and the appellant's appeal is dismissed.

### **NOTICE OF DECISION**

The Judge of the First-tier Tribunal did not made a material error of law and her decision dismissing the appeal is maintained. The appeal is dismissed.

No anonymity direction is made.

Signed

Date 7 December 2022



**Deputy Upper Tribunal Judge Froom**