



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001951

First-tier Tribunal No: EA/50224/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 July 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Angjeli Uka
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R Rashid of Counsel, instructed by HI Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard by remote video at Field House on 12 July 2023

DECISION AND REASONS

1. By a decision of the First-tier Tribunal dated 10.8.22, the appellant has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Ennals) dismissing the appeal against the respondent's decision of 29.1.21 to refuse the application made on 10.12.20 for an EEA Residence Card as the Extended Family Member of an EEA national (Romanian), RP, exercising Treaty rights in the UK, pursuant to the Immigration (EEA) Regulations 2016.
2. In summary, the grounds dated 2.9.21, drafted by Mr Holt who acted for the appellant at the First-tier Tribunal appeal hearing, allege: (i) that the First-tier Tribunal unlawfully interpreted 'durability' to require a relationship akin to marriage; (ii) failed to have regard to relevant evidence (why the couple did not visit each other prior to cohabitation); and (iii) failed to consider the reality of the tenancy agreement, which continued as a period tenancy without the need for renewal.

3. In granting permission, the First-tier Tribunal considered it arguable that at [19] of the decision the judge erred in interpretation of the term 'durable relationship'. The other two grounds were considered to have less merit but nevertheless permission was granted on all three grounds.
4. Following the helpful submissions of both legal representatives, I reserved my decision to be given in writing, which I now do.
5. I begin with the grounds, in which Mr Holt, who represented the appellant at the First-tier Tribunal appeal hearing, pointed out that at 8(5) the regulations require only that, *'The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.'* He further submits that whilst Home Office guidance is to the effect that it is expected that *"the applicant and the EEA national sponsor have been living together in a relationship similar to marriage which has continued for at least 2 years,"* there is in fact no definition of the term in EU law. Mr Holt relied on the authority of YB (EEA reg 17(4) – proper approach) Ivory Coast [2008] UKAIT 00062 to the effect that 'durable relationship' is a Community law term and to seek to reduce it to the criteria contained within the Immigration Rules would run contrary to Community law.
6. According to the current Home Office policy, a durable relationship is one in which there is a period of two years cohabitation or where there is *"significant other evidence."* I note as a matter of interest, although not applicable to the present case, that the definition of 'durable relationship' in the Annex to Appendix EU (Family Permit) provides:

"(a) the applicant is, or (as the case may be) was, in a durable relationship with the relevant EEA citizen (or, as the case may be, with the qualifying British citizen), with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship);"
7. It is, presumably, for that reason that in its Guidance the Home Office accepts that 'other significant evidence' may be sufficient where a relationship has not yet lasted two years. However, as Ms Nolan pointed out, at no point does the judge seek to apply the test under the Immigration Rules or a requirement for a two-year relationship akin to marriage to the facts of this case.
8. The grounds at [3(a)] assert: *"The FTTJ has unlawfully interpreted "durability" to require a relationship akin to marriage, when no such interpretation is afforded by law."* However, that is not a strictly accurate representation of what the judge stated. At [11] of the decision, Judge Ennals stated:

"I consider that durability involves some assessment of the relationship's ability to last and withstand pressure, and some evidence of it having done so. I consider that in the context of these regulations a 'durable relationship' is intended to have the characteristics of a marriage or civil partnership, albeit without the legal processes having been gone through."
9. It is an obvious point that a relationship of only a short duration might eventually prove to be durable, but in the early days or months, its durability is not proven by the fact of the relationship alone and, inevitably, some relationships founder. It may be that most relationships which are found to be durable relationships will be akin to a civil marriage or partnership, but the question to be considered by the judge was not whether this relationship was akin to marriage or partnership but whether the relationship was demonstrated to be durable. There is no material error in the judge's gloss that an assessment

needed to be made of the relationship's ability to last and withstand pressure. Furthermore, considering evidence of durability in terms of the 'characteristics' of a marriage or partnership is not beyond relevant considerations, provided that eyes are not blinkered to the possibility of other evidence of durability.

10. I am satisfied that the judge was not applying the term 'durability' as restrictively as asserted in the grounds and was not imposing a requirement that only a relationship akin to marriage or civil partnership could suffice, to the exclusion of other evidence or factors of the durability of the relationship. It is clear from the decision that other factors were indeed considered, and the evidence taken in the round. See for example [14] of the decision, where the judge outlined the history of the relationship as asserted in the evidence adduced by or on behalf of the appellant. Another example is that at [15] of the decision, the judge took into account that the partner seemed to have no knowledge of the appellant's immigration history or that he had claimed asylum. Unarguably, the judge was entitled to find that these factors did not suggest a close and durable relationship between them.
11. At [19], after setting out the chronology of the relationship, the judge considered that it was only from July 2020 onwards "*that the relationship could come near to being equivalent to marriage or a civil partnership.*" Contrary to the submissions of Mr Rashid, that was not an acceptance that the relationship was durable from that point onwards, only that on their own evidence it certainly could not be regarded as durable before that point. Neither was this the imposition of a requirement that the relationship had to be akin to marriage or civil partnership but merely pointing out that up to that point and the commencement of the cohabitation the relationship was no more than dating, going out with each other. Frankly, the grounds assist the judge's conclusion on this point when it is stated at [16] of the grounds that the evidence was "*we were in love, but if you understand what I'm saying now, we have to be careful to the point of getting intimate with each other, and going into place where we lived, so we took it very carefully, we want to be very sure before moving to the next step.*" If there was any evidence that the relationship was not durable at that point, this was it; they wanted to be careful before proceeding to the next step of their relationship. The judge then went on to point out that there was little evidence of durability in terms of a committed relationship beyond that point. That finding was entirely open on the evidence.
12. The remaining grounds are weak in the extreme and no more than a 'make-weight' to the principle ground. They are little more than a mere disagreement with the decision of the First-tier Tribunal. As explained in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC), "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence."
13. The complaint that the judge misunderstood the nature of a continuing period tenancy is not made out as the point being made by the judge was only that the tenancy was not renewed in both names, as it could have been. Even though there was no necessity for his name to be added, as in law the tenancy continued, the judge was entitled to point out that the fact that the appellant's name is not on the tenancy is a fact which does not assist in supporting the claim of a durable relationship, when it might otherwise have done. At [14] the judge made the observation that at the stage when the appellant first moved in in July 2020 the partner may not have wanted the appellant to be on the tenancy adding, "*There may be many reasons for this, but it does not provide support for*

the contention that this was seen at that point as a long term arrangement." The judge was making an observation of a lack of objective evidence in support of the claimed durability of the relationship. To the limited extent that the point was probative, it was one open to the judge on the evidence and discloses no error of law.

14. Unarguably, in relation to the remaining ground, the judge was aware of the reason advanced for not visiting each other's houses prior to cohabitation and the fact that it is not mentioned does not mean that it was not considered; at [10] of the decision the judge explained that all evidence had been taken into account before any findings of fact were made. In any event, the assertion does not assist the appellant's case to any significant degree. The advanced reason is so entirely self-serving and completely unsupported by independent evidence that very little probative weight could have been attached to the explanation; so little as to make no possible difference to the outcome of the appeal. Indeed, as stated above, if anything the explanation mitigates against the relationship being durable. The fact remains that they did not visit each other's houses and, once again, this fact, whatever the justification for not visiting, was another factor which did not support the claimed durability of the relationship. In reality, it was little more than an observation of the absence of a factor which might have assisted the claimed durability of the relationship. Unarguably, the judge was entitled to take this into account in the overall assessment of the issue to be resolved, namely durability of the relationship.
15. It has repeatedly been said that appellate courts and tribunals should exercise restraint when considering appeals against findings of fact: see Volpi v Volpi [2022] EWCA Civ 464. I find no proper basis for interfering with the Judge's findings in the present case. I am satisfied that the judge's findings and conclusion were open on the evidence and were not "rationally insupportable," as alleged. Considering the treatment of the issue of durability by the First-tier Tribunal as a whole, I am satisfied that it discloses no material error of law.
16. In the circumstances, and for the reasons explained above, no material error is disclosed by any of the grounds of appeal.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2023

