



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001037
On appeal from: EA/50481/2021
IA/02772/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 September 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

DRITJON KOTORRI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Amrika Nolan, a Senior Home Office Presenting Officer
For the Respondent: Mr Alex Burrett of Counsel, instructed by Oliver & Hasani solicitors

Heard at Field House on 7 August 2023

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 25 February 2021 to refuse him a residence card as the extended family member of an EEA national, with reference to the Immigration (European Economic Area) Regulations 2016 (as saved). The claimant is a citizen of Albania.
2. For the reasons set out in this decision, I have come to the conclusion that there is no material error of law in the decision of the First-tier Tribunal, which is upheld.

3. **Mode of hearing.** The hearing today took place face to face.

Background

4. The main basis of the appellant's case is that he is an extended family member of the EEA sponsor, an Albanian citizen, having been in a durable relationship with her since January 2020 and cohabited since July 2020. The parties applied for permission to marry on 4 November 2020 but did not actually marry until after the specified date of 31 December 2020. This is not an EUSS case.
5. The claimant has a criminal history in the UK. He was deported, on non-EEA grounds, in 2017, having been sentenced to two years' imprisonment for a drugs offence. The deportation order has not been revoked, but the claimant returned to the UK in breach thereof in November 2019, beginning his relationship with his EEA spouse in January 2020.

Refusal letter

6. The refusal letter makes no reference to the claimant's deportation or his criminal history.
7. The Secretary of State rejected the claimant's account of the relationship on the basis that he had produced no evidence of cohabitation, joint finances, commitments or responsibilities, and that the evidence of the relationship was sparse.
8. The claimant appealed to the First-tier Tribunal.

First-tier Tribunal decision

9. The First-tier Judge allowed the appeal. The Presenting Officer who appeared before the First-tier Tribunal did not raise the question of the claimant's criminal history or his deportation order. There was nothing in the material before the First-tier Judge to alert him to this issue.
10. The Judge found the claimant and sponsor to be credible witnesses and that they met the requirements of Regulation 8 of the EEA Regulations.
11. The respondent appealed to the Upper Tribunal.

Permission to appeal

12. The Secretary of State sought permission to appeal on two grounds:
- (1) That the Judge's reasoning on whether the parties were in a durable relationship was inadequate; and
 - (2) That, applying Regulations 23 and 27, the claimant's exclusion and/or removal from the jurisdiction would be justified because he was deported in 2017 and the deportation order had not been revoked.

13. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Pickup as follows:

“1. There may be little merit in the first ground, which appears to be little more than a disagreement with the judge’s findings and reasoning on the issue of a durable relationship.

2. However, the second ground is at least arguable. It is arguable that on the background information that the appellant had been deported in 2017 following a criminal conviction and returned unlawfully in 2019, the judge should have considered the exclusionary provisions under Regulations 23 and 27 of the 2016 Regulations. The respondent will have to demonstrate that this should have been considered even though it was never raised as an issue at the appeal hearing.”

14. There was no Rule 24 Reply on the claimant’s behalf.
15. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

16. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.
17. For the Secretary of State, Ms Nolan accepted that the deportation issue and the claimant’s criminal history had not been raised, either in the refusal letter or at the First-tier Tribunal hearing. She relied on the guidance given on the transitional provisions by the Upper Tribunal in *Geci (EEA Regs: transitional provisions; appeal rights)* [2021] UKUT 285 (IAC).
18. Ms Nolan continued to rely on ground 1, arguing that the Judge’s reasoning at [16]-[19] was insufficient to support his conclusions at [20] and that there was a ‘jump’ in his reasoning.
19. For the claimant, Mr Burrett disagreed. Given the Judge’s acceptance that the claimant and sponsor were credible witnesses, his reasoning was sufficient and should be upheld.

Conclusions

20. As regards ground 1, I concur with the assessment by Upper Tribunal Judge Pickup that this is merely a detailed disagreement with findings of fact and credibility which were open to the First-tier Judge on the evidence at the hearing: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed.
21. Ground 2, which is the one on which permission was granted, is not pursued, rightly given the Secretary of State’s failure to advance it either in the refusal letter or before the First-tier Tribunal.

22. The Secretary of State's appeal must therefore fail. I dismissed the appeal at the hearing.

Notice of Decision

23. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 August 2023