



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001717

First-tier Tribunal No: EA/51817/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th October 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Mohammed Amine Belbina
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel, instructed by Vista Legal Services
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard remotely at Field House on 5 October 2023

DECISION AND REASONS

1. The appellant, a national of Algeria, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Athwal) dismissing his appeal against the respondent's decision of 2.6.21 to refuse his application made on 11.11.20 for an EEA Residence Card as the Extended Family Member (EFM) of NG, an EEA national (Czech) exercising Treaty rights in the UK.
2. In summary, the grounds assert that (i) the First-tier Tribunal Judge failed to make any findings on the credibility of three witnesses giving evidence in the appellant's support; (ii) failed to take into account documentary evidence of residence/cohabitation; (iii) made a material mistake of fact as to the content of a photograph of a poster; and (iv) failed to provide adequate reasons for the conclusions reached in relation to the appellant's certificate of Islamic marriage.
3. At the core of the appeal was whether the appellant and the EEA sponsor had been in a relationship since 2018 and cohabiting since August 2020, as claimed.

4. Mr Holmes relied on the grounds as drafted and made no further oral submissions. For his part, Mr Walker conceded the appeal, accepting that there was evidence of cohabitation and that the judge failed to adequately address the oral and written evidence of the witnesses. He also accepted that the decision was inadequately reasoned in respect of the findings on the Islamic marriage certificate.
5. At [11] of the decision the judge noted the appellant's bundles and at [14] made clear that all the evidence had been considered, whether or not specifically mentioned in the written decision. At [16], the judge confirmed that the evidence of the appellant and the witnesses was recorded and the entirety of their account was taken into account. At [28] the judge again confirmed that all of the evidence had been considered as a whole before findings were made.
6. I bear in mind that it was not necessary for the judge to summarise the evidence of the witnesses, provided that findings are made in respect of that evidence. As explained in Budhatkoki [2014] UKUT 00041 (IAC), "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost." At various points in the decision, the judge refers to the evidence of the witnesses and, unarguably, has taken their evidence into account, including that the couple started to cohabit from August 2020, as noted at [25] of the decision. However, the judge makes no findings on that witness evidence and, if it was not accepted, provided no reasoning for rejecting it.
7. In the second ground, complaint is made that the judge failed to list all of the documents in support of the claim to cohabitation, with specific reference made to 13 such documents that were not listed. The grounds erroneously refer to [21] of the decision but I assume that [24] is the list in question. Once again, it was not necessary for the First-tier Tribunal to list all the documents, provided that it is clear that the evidence has been considered as a whole. At [25] the judge accepted that the documentation established that the appellant and the sponsor are registered at the address in question but observed that there little evidence to demonstrate that people were actually living in the house. Mr Holmes' submission was effectively that it is not clear that all of the evidence has been taken into account, which submission Mr Walker did not challenge.
8. The third ground asserts a mistake of fact. The judge was entitled to be concerned that the stamp on the Islamic marriage certificate was not backed up by a statement from the mosque. Instead, the appellant provided photographs taken outside a building with a poster in the window. It does appear that the judge was mistaken as to whether a charity number was different between the photograph of a poster and the certificate, the number apparently referring to a bank account, not a charity registration number.
9. Considered overall, I accept Mr Holmes' submission, conceded by Mr Walker, that the decision lacks adequate reasoning for the findings made. In all the circumstances, I find that the decision of the First-tier Tribunal is flawed for material error of law and must be remade.
10. I did not accept Mr Holmes' submission that the decision could be simply remade by allowing the appeal. It seems to me that the findings made would have been open on the evidence, if they had been adequately reasoned. In line

with paragraph 7.2 of the Practice Statement, I am satisfied that this matter should be remitted to the First-tier Tribunal, as “(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”

Notice of Decision

The appellant’s appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside in its entirety.

The appeal is remitted to the First-tier Tribunal to be remade afresh.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 October 2023