



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000509

First-tier Tribunal No: EA/07353/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

2

7<sup>th</sup> September 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**KRESHNIK MAZRREKU**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer, remotely by video link

**Heard remotely at Field House on 5 September 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant, a national of Albania, born on 15 January 1981 appeals with permission to the Upper Tribunal against the decision of the First-tier Tribunal, Judge Trent (“the judge”) promulgated on 10 January 2023 dismissing the appellant’s appeal. The appellant had appealed to the First-tier Tribunal against the decision of the respondent to refuse the appellant’s application, made on 30 June 2021, for an EU Settlement Scheme (EUSS) family permit, as the durable partner of his sponsor, his now wife, Ms Marta Tyburek, a Polish national. The respondent Entry Clearance Officer had refused the appellant’s application on 9 February 2022.

### **Decision of the First-tier Tribunal**

2. The judge dismissed the appellant's appeal in summary, at paragraph [19] of the decision, as the judge was not satisfied that the appellant and sponsor are or were at the specified date or the date of the application, in a durable relationship. The judge was not satisfied that the appellant fell within the definition of "durable partner" and accordingly a "family member of a relevant EEA citizen". Therefore the judge was not satisfied that the appellant met the eligibility requirements of paragraph FP6(1) of Appendix EU (family permit) of the Immigration Rules.

### **Grounds of Appeal**

3. The appellant appealed to the Upper Tribunal on the grounds that:
  - (i). The judge had erred in applying law and policy, specifically at paragraph [12] in rejecting the sponsor's evidence that she and the appellant started living together from around 2018. It was further argued that the judge erred at [14] in finding that the appellant's physical absence from the UK meant the relationship was not real or durable.
  - (ii). The judge took into account an irrelevant consideration. It was submitted that the judge erred at [13] in concluding that the appellant and sponsor were not "truly in a relationship" due to no explicit mention of the children in their witness statements.
  - (iii). There was a failure to give reasons. It was argued that the judge erred at [15] in not giving reasons for rejecting the sponsor's evidence about the durability of the relationship, including that they kept in contact by telephone and video and/or for requiring additional evidence and it was further argued that this was not raised to the sponsor at the hearing.
  - (iv). The judge reached conclusions without evidence. It was argued that the judge had erred at [16] to [17] in speculating without evidence that the sponsor had taken the children out of school when she travelled to marry the appellant when in fact it was submitted that it had been the sponsor's evidence at the hearing that she left the children in the care of her parents and it was argued that this error led the judge to wrongly reject the sponsor's evidence regarding the reasons for the delay in her marriage to the appellant.

### **Error of Law Hearing**

4. The matter came before me in a remote hearing from Field House. There was no appearance by the appellant or his representatives, remotely or otherwise. The Tribunal had sight of correspondence from the appellant's representatives received on 4 September 2023, the day prior to the hearing. In that correspondence, the Direct Access barrister from Crystal Chambers requested an adjournment the following morning noting that contact had been lost with the client and stating that information from the appellant's family indicated that he had illegally travelled to the UK and had been apprehended by the UK authorities although there was no information about the appellant's whereabouts.
5. The request for an adjournment requested that the matter be adjourned and that the representative's absence from the hearing should be excused. That request for an adjournment was refused by the Upper Tribunal at 9 pm on 4

September 2023 in an email indicating that the hearing remained listed for an error of law determination and that the judge could decide whether the hearing ought to be adjourned or may decide to proceed in absence particularly as no application had been made to adduce further evidence under Rule 15(2A). Although the adjournment request had been refused, there was no appearance from the appellant's representatives.

6. I considered The Tribunal Procedure (Upper Tribunal) Rules 2008 including the overriding objective and Rule 38 and was satisfied that the appeal should proceed in the appellant's absence including given the last minute nature of the adjournment application and the lack of any adequate explanation as to what further instructions were required in order for the appellant's representatives to proceed. There was no indication as to how the appellant would be prejudiced by the hearing of the error of law appeal in his absence.
7. It was additionally not explained why the appellant's representatives were unable to attend and either renew their adjournment application or continue in his absence. I was satisfied that the appellant and his representatives had been notified of the hearing and/or that reasonable steps had been taken to notify the appellant of the hearing and that it was in the interests of justice to proceed with the hearing. Mr Tufan made brief submissions and relied on the respondent's Rule 24 response.
8. The respondent in the Rule 24 dated 8 March 2023 argued that the grounds of appeal and the subsequent grant of permission failed to refer to the numerous other factors considered by the judge, notably the lack of any evidence of contact or communications as set out at [19] of the decision and the clear inconsistencies of the witness testimony as recorded at [12].
9. The respondent submitted that the grounds of appeal argued the same points as those rejected by the First-tier Tribunal as set out at paragraph [18] of the judge's decision.
10. In addition, the respondent noted that whilst the entry clearance refusal letter only raised one ground of refusal, it not being accepted that the appellant was in a genuine relationship with the sponsor, in addition the respondent submitted that it was an obvious point that as a durable partner the Immigration Rules required a relevant document to evidence that the appellant's residence had been facilitated under the EEA Regulations which the appellant had clearly failed to evidence. The respondent relied on the annex to Appendix EU family permit in relation to durable partners which are defined including as follows:
  - (b) *where the applicant was resident in the UK and Islands as the durable partner of a relevant EEA citizen before the specified date, the person held a relevant document as the durable partner of the relevant EEA citizen or, where there is evidence which satisfies the Entry Clearance Officer that the applicant was otherwise lawfully resident in the UK and Islands for the relevant period before the specified date (or where the applicant is a joining family member) or where the applicant relies on the relevant EEA citizen being a relevant person of Northern Ireland, there is evidence which satisfies the Entry Clearance Officer that the durable partnership was formed and was durable before the specified date;*
11. The respondent submitted therefore that the judge was entitled to find that the appellant was not in a genuine durable relationship and in any event even if such

had been accepted the appellant did not meet the requirements of the Immigration Rules due to the lack of existing documentation.

## **Discussion**

### **Ground 1**

12. Ground 1 takes issue with the judge's findings at paragraph [12]. Ground 1 is misconceived. Although it is stated at ground 1 that the judge rejected the sponsor's evidence that she and the appellant started living together from around December 2018 because the judge wrongly concluded that the appellant and sponsor could not live together as a family during her frequent and long visits to the UK, that is to entirely mis-state the judge's findings. The judge at [12] in fact made findings in respect of the sponsor's inconsistent evidence as follows:

*"The sponsor's oral evidence as to the relationship conflicted with her witness statement, and that of the appellant, in one material aspect. She said in oral evidence that she started living with the appellant in March 2020, not 'around' December 2018. That is a considerable difference in evidence. Her response when asked about this difference was to state that she was not living in the UK during that period but that when she came to the UK, which was quite frequent, she would bring her children and they would stay with the appellant. To my mind, that is not a fair explanation for a significant change to the evidence given by both appellant and sponsor that they lived together as one family from around December 2018. I do not therefore consider the sponsor or the appellant's evidence as to their relationship to be reliable. Further, there is no evidence before me as to where the appellant was living at that time, whether that be tenancy agreements, bills or otherwise. The only evidence purporting to show this is one photograph which the appellant states was taken on 15 April 2019 at the appellant's home. That one photograph is not sufficient to establish on the balance of probabilities that the appellant and sponsor were in a relationship, still less living together, at that time."*

13. The judge did not therefore reject the evidence before the First-tier Tribunal because the judge wrongly concluded that the parties could not live together during the sponsor's visits to the UK. Rather, the judge rejected the evidence because of the inconsistent and contradictory evidence provided by the appellant and the sponsor and the failure to provide a reasonable explanation for that conflicting evidence (the judge considering written evidence from both the appellant and the sponsor and oral evidence from the sponsor). Specifically, whilst in written evidence the appellant and the sponsor claimed that they started living together around December 2018, in oral evidence the sponsor advised she was not living in the UK at this time, and started living together with the appellant in March 2020, with visits to the UK before that date. The judge further rejected the appellant's account due to the lack of evidence in relation to where the appellant was living and the judge provided adequate reasons for those findings.
14. Although the grounds of appeal seek to characterise the judge's findings as not allowing for the fact that relationships can continue despite physical absence from the house, instead the evidence was rejected because of lack of credibility.

The judge further noted at [13] that there was no evidence of any messages, phone calls or other communications between the sponsor and the appellant at this time which the judge found to weigh against a finding of a durable relationship.

15. The judge went on to find that there was no evidence of the appellant having been a tenant at the property where the sponsor lived beyond September 2020 and the judge took into account that the utility and council tax bills from beyond that period remained in the appellant's name despite the admission that the appellant had not been in the UK since August 2020 and therefore this evidence provided little by way of confirmation that he had been living at the property. The fact that the appellant's name was included on the bills for a period long after he left both the property and the UK led the judge to find that it was not safe for him to infer that his name being on earlier dated bills meant that he had lived at the property from March to August 2020 either.
16. The judge also treated the tenancy agreement with caution given that there was an inaccurate right to rent confirmation purportedly signed by the appellant. Again, ground 1 attempts to characterise this incorrectly as the judge requiring the appellant's physical presence and drawing adverse inference from his absence, as opposed to the judge's actual findings which for the adequate and rational reasons given, find the appellant and sponsor's evidence to be lacking in credibility.
17. The judge was not saying at [14] that the error in the tenancy agreement regarding the appellant's right to rent in the UK meant that the relationship was not durable, but rather it was one of the factors that the judge took into account in not accepting the evidence before him as credible. Ground 1 is not made out.

## Ground 2

18. It was argued that at [13] the judge fell into error in taking into account an irrelevant consideration when the judge concluded that the appellant and sponsor were not "truly in a relationship" as there had been no explicit mention of the children in their appeal statements. Again this mis-characterises the judge's findings.
19. The judge took into account in the round that neither the sponsor nor the appellant had mentioned the sponsor's children in their witness statement. The sponsor in oral evidence had an opportunity to address this issue with the sponsor being noted at [13] as not knowing that this would be important. It was open to the judge to make the findings that he did, that he did not accept this explanation.
20. In essence, the judge took into consideration as one of the factors in his overall findings, that if the sponsor and the appellant had been in a relationship as claimed and living as one family with the sponsor's children since 2020, the sponsor's children would have formed a significant and material part of that family and the lack of any mention of those children, when considered in the round in light of the judge's overall concerns in respect of the relationship, was a relevant factor.
21. Again, the judge did not, as stated, reject the appellant's case because there was no mention of the sponsor's children; rather the judge was entitled to not accept the explanation given to him for the failure to mention those children and

was further entitled to take into account the evidence of the appellant and the sponsor and to not find that credible.

22. The fact that the appellant's bundle contained the children's birth certificates and their passports and photographs including of the appellant is immaterial. Indeed, the fact that the children appear in the photographs but not in the witness statements arguably adds further weight to the judge's findings, that the lack of reference to the children was 'odd'. Whilst it is correct to say that the focus of the appeal was the relationship between the appellant and the sponsor rather than between the appellant and the children, in order to make findings on that relationship the judge had to consider the evidence holistically which necessarily included where the appellant was said to be living and with whom.
23. Ground 2 does not disclose an error of law and is not made out.

### Ground 3

24. It was argued that the judge erred at [15] in not giving reasons for rejecting the sponsor's evidence about the durability of the relationship or for requiring additional evidence about the relationship and it was argued that this was not raised with the sponsor.
25. However, both the sponsor and the appellant were on notice that the durability of the relationship was not accepted by the respondent. The judge at [15] noted that aside from tenancy agreement and bills covering only a five to six month period in 2020, there was little in the judge's findings to establish the durability of any relationship between the sponsor and the appellant particularly between August 2020 and the specified date, the date of the application and the date of the hearing.
26. The judge went on to find, in relation to the period post-August 2020, the judge only had the sponsor's evidence that she and the appellant had kept in telephone and video contact and the fact of the marriage, although there was no evidence of any such calls or communications having taken place.
27. Whilst corroboration is not required, the judge was entitled to find as he did that independent evidence of claimed telephone/video contact could reasonably have been provided if it existed and there was no error in that finding. No error, material or otherwise is made out in ground 3.

### Ground 4

28. Ground 4 argued that the judge had erred at [16] and [17] in speculating without evidence that the sponsor had taken the children out of school when she travelled to marry the appellant when it was submitted that the sponsor's evidence at the hearing had been that she left the children in the care of her parents in the UK and travelled to visit and marry her husband before she returned back to the UK after the marriage. It was further submitted that this error led the judge to reject the sponsor's evidence regarding the reasons for the delay of her marriage to the appellant.
29. Although the grounds of appeal argue that it was the sponsor's evidence that she had left the children in the care of her parents when she had travelled to marry the appellant there was nothing before me to suggest that the judge's findings at [16] and [17] erred in fact.

30. The judge found at [16] that it was the sponsor's evidence that she and the appellant were separate because of Covid related travel restrictions and because she was unable to take her children out of school to travel to Albania. The judge went on to record that in oral evidence the sponsor stated that she did travel to Albania in March 2021 around seven to ten days before the wedding. The judge went on to state that "she must have taken the children out of school in order to do so, which undermines her claimed reasons for not travelling to Albania sooner to join her husband and further undermines the reliability of her evidence". The judge further relied on this at [17] of the decision.
31. The grounds of appeal do not point to any evidence to support the claim that the sponsor, in oral evidence, told the judge that she had left the children in the care of her parents. In any event, even if that is not the case and the judge did make an error of fact in finding that the sponsor had taken the children out of school when she did not, such is not material, given the weight of the judge's adverse findings.
32. The judge's conclusions are summarised at [17] where the judge considered on the balance of probabilities, notwithstanding the tenancy agreement which the judge noted contained a false declaration of the appellant's right to rent, and noted the paucity of evidence establishing any significant relationship at any relevant time.
33. The judge also took into consideration the failure to mention the sponsor's children and the lack of evidence after August 2020 of the relationship having continued other than production of the marriage certificate and the sponsor's claim that they continued to speak. It is evident that even if the judge erred in relation to whether the sponsor had taken the children out of school, which has not been established, any such error would not be material as the judge would have reached the same conclusions.
34. No material error is established in ground 4.

### **Conclusion**

35. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellant's appeal is dismissed.

**M M Hutchinson**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 September 2023**