



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001662

First-tier Tribunal No: HU/53705/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 7 September 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

**FESTIM RADA
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal of Counsel

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 18 August 2023

DECISION AND REASONS

Background

1. This is an appeal against a decision of First-tier Tribunal Judge Shiner promulgated on 14 April 2023 refusing on human rights grounds an appeal against the Respondent's decision dated 15 June 2022 refusing an application for leave to remain in the UK.
2. The Appellant is a citizen of Albania born on 31 January 1995. He claims to have entered the UK on 9 November 2018. He was encountered by the Respondent and on 9 July 2021 served with papers as an illegal entrant. In response, on 16 July 2021 the Appellant submitted a statement setting out grounds on which he should be permitted to remain in the United Kingdom (commonly 'Section 120 grounds', pursuant to section 120 of the

Nationality, Immigration and Asylum Act 2002) with supporting evidence. These grounds were treated as a human rights application.

3. On 6 August 2021 the Appellant entered into a civil partnership with Sabine Dolbikova (d.o.b. 10 February 1998), a citizen of Latvia ('the Sponsor'). Thereafter further evidence in relation to the Appellant's circumstances was provided to the Respondent on 16 September 2021 and 1 June 2022.
4. I pause to note that although the civil partnership post-dates the Appellant's arrest of 9 July 2021, and the timing of the civil partnership was seen by the Respondent as an adverse feature, the First-tier Tribunal Judge found that the process of arranging a civil partnership had been commenced prior to the arrest, and rejected the Respondent's argument that the civil partnership was only entered into in response to the arrest and proposed immigration action by the Respondent. (See 'Decision and Reasons' of the First-tier Tribunal, paragraph 45.)
5. In due course the Appellant's human rights application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 14 June 2022.
6. The Respondent considered the Appellant's case by reference to the Immigration Rules in respect of a partner (Appendix FM), the Rules in respect of private life (paragraph 276ADE(1)), and pursuant to Article 8 of the ECHR. In summary:

(i) The Respondent was not satisfied that the Appellant and the Sponsor were in a genuine and subsisting relationship.

(ii) Nor was the Respondent satisfied that the Appellant met the 'immigration status' requirements: he was present in the UK in breach of immigration laws and paragraph EX.1 of Appendix FM was not, in the Respondent's view, satisfied - it being the Respondent's position in the premises that the relationship with the Sponsor was not genuine and subsisting. (Submissions in the alternative were advanced by the Presenting Officer at the hearing: see paragraphs 30 and 32.)

(iii) The Respondent was not satisfied that paragraph 276 ADE(1) (vi) availed the Appellant because he had not established that there would be very significant obstacles to his integration into Albania were he required to leave the UK.

(iv) The Appellant's immigration history and the absence of any exceptional circumstances were all such that the Respondent was not satisfied that there would be any disproportionate interference with the Appellant's private life were he required to quit the UK.

7. The Appellant appealed to the IAC.
8. The appeal was refused for reasons set out in the 'Decision and Reasons' of Judge Shiner promulgated on 14 April 2023.
9. The Appellant applied for permission to appeal to the Upper Tribunal which was refused in the first instance by the First-tier Tribunal on 17 May 2023. A renewed application for permission to appeal was granted by Upper Tribunal Judge Kamara on 9 June 2023. In material part the reasons for granting permission to appeal state:

"In view of the judge's positive findings which included that messages between the appellant and his wife were supportive of a loving relationship as was the oral evidence of the witnesses, it is arguable that the judge's findings as to the implausible nature of the first meeting display the application of a higher standard of proof and were also, arguably, undermined by further positive findings elsewhere in the decision and reasons."

10. The Respondent resists the appeal and has filed a Rule 24 notice dated 13 July 2023.

Analysis

11. At the core of the arguments before me is the narrative accounts of the Appellant and the Sponsor as to how they met. In the circumstances I note the following:

(i) In the course of his application the Appellant represented that he had met the Sponsor at a Costa Coffee shop: see representatives' letter of 16 July 2021 - *"The applicant and the sponsor met in April 2020 at a Costa coffee shop"*.

(ii) In support of the application the Sponsor provided a statement confirming *"in April 2020, we met in Costa coffee shop"*.

(iii) In the RFRL the Respondent stated: *“Your representatives stated that you had met [the Sponsor] in April 2020 in a coffee shop. This statement has not been accepted. During April 2020 the United Kingdom was in a national lockdown caused by the Covid-19 Pandemic. Included in the rules was the requirement for all hospitality venues, including coffee shops, to be closed. It is therefore not accepted that you met as stated.”*

(iv) On appeal, in his witness statement dated 26 September 2022 the Appellant stated that he wished to “rectify” his previous statement about meeting in a Costa coffee shop, acknowledging, as per the RFRL, that *“all coffee shops such as Costa Coffee were indeed closed”*. He stated *“[The Sponsor] and I first met in April 2020 at a Shell petrol station whilst we were both getting coffee from a Costa Express machine in the station”*.

(v) I pause to note that in setting out the relevant history the First-tier Tribunal Judge quoted the passage in the Appellant’s appeal witness statement that followed from the passage set out immediately above: *“we both remembered that we each had a Costa Coffee when we first met so we automatically thought we were in Costa at the time. Only later did we remember that we were actually in a Shell petrol station at the time getting a cup of take away coffee”* (Decision at paragraph 33(4)).

(vi) The Sponsor’s appeal witness statement is drafted in similar terms on this issue.

(vii) The Appellant’s oral evidence in respect of this issue is noted at paragraph 35. The Sponsor’s is noted at paragraph 38.

12. The Judge’s findings and reasons in respect of this matter are at paragraph 46:

“However I find the Appellant and Sponsor’s account of first meeting, in a service station and obtaining a Costa coffee in April 2020 to be implausible. I reject their evidence in this regard. I do so in light of the changed account as the Sponsor put in her initial statement and the representations made of meeting in a Costa coffee shop. A Costa Coffee shop and a Shell service station are two completely different environments. The only explanation provided for failing to remember or recall or articulate accurately how they met – until the SSHD points out that they could not have met at Costa coffee shop – was that they were excited to meet. I judge this to be an inadequate

explanation as to the failure to recall properly how they met. On their account they met at a time of lockdown, that time was a significant, remarkable and memorable social period. I find it very implausible that had they met during lock down and commenced their relationship throughout that time, then lockdown would be a major part of their narrative of the first meeting and establishing a relationship, if it were true. I accept that the Appellant and Sponsor gave broadly consistent accounts as to exchanging details, communicating over social media and as to meeting in parks, their assertions as to their future plans together I take such matters into account. But I do not find within the overall context of their changed accounts that such consistency comes close to addressing the concerns that I have set out above."

13. Of course the initial meeting of the Appellant and the Sponsor was not the only matter in the application and the appeal.
14. Both in his application and on appeal the Appellant provided other evidence in support of his claim to be in a genuine relationship with the Sponsor. In addition to his and the Sponsor's witness statements (and in due course their oral testimonies) he provided, amongst other things, documents and statements as evidence of cohabitation and relationship; further, two witnesses were called at the hearing - a friend of the Sponsor and the Sponsor's mother.
15. It seems to me manifest that the Judge expressly recognised the nature of such evidence, and its purport. It was variously referred to as: "*suggestive of a relationship*", "*supportive of the Appellant and Sponsor being in a loving relationship which commenced in or about May 2020 as claimed*" (paragraph 47); "*the witnesses' oral evidence... goes to support the Appellant's claims*" (paragraph 48); "*some joint bills together suggestive of the two living... together*" (paragraph 49).
16. However the Judge also expressed caveats in respect of such evidence:; "*I also take into account that such messages can be created to appear to support a narrative*" (paragraph 47); "*I take into account in this assessment also the real possibility that the witnesses have embellished the extent of the Appellant and Sponsor's claimed relationship*" (paragraph 48).
17. The Judge also assessed the Appellant's evidence in respect of the state of his relationship with his family in Albania, finding it "*to be vague and unconvincing*", and ultimately characterising it as "*implausible*" (paragraph 50).

18. It is convenient to note parenthetically at this juncture that it seems to me that the Appellant's Grounds of challenge herein in seeking to emphasise 'positive' aspects of the Judge's overall findings, fail to recognise or otherwise acknowledge the qualifications on such findings, or the adverse assessment of the Appellant's evidence regarding his family.
19. Be that as it may, it seems adequately clear that the Judge distilled all of these matters into the finding set out at paragraph 51:

"In light of all of the evidence and everything that was said in the Appellant's favour I find that the Appellant has failed to establish that he is in or ever was in a genuine and subsisting relationship with the Sponsor. I judge that the Appellant and Sponsor and other witnesses were not honest with the tribunal. I find the Appellant and Sponsor's evidence as to the correction of the detail of their first meeting (in a service station not Costa coffee shop) to be incredible. The Appellant and Sponsor I find not to be credible in respect of this key aspect of their evidence. I find them not truthful in this regard such a conclusion causes me to doubt the substance of the Appellant's claim as to being in then or now a genuine and subsisting relationship with the Sponsor I do so even having regard to all of the other factors in the Appellant's favour."

20. The Appellant's challenge to the decision of the First-tier Tribunal, as set out in the Grounds, is in substance to argue that in according such weight to the adverse finding in respect of the circumstances of the Appellant and the Sponsor meeting as to outweigh the other favourable aspects of the case, the Judge, implicitly, misapplied the standard of proof of a balance of probabilities. (I have emphasised that this is the challenge 'as set out Grounds' because during the course of the hearing Ms Iqbal argued that the conclusion was also 'perverse' even though, in my judgement, that was no part of the original challenge. See further below.)
21. The Grounds also make submissions in respect of the approach to 'insurmountable obstacles' under paragraph EX.1 of Appendix FM – but it is recognised that any argument in this regard is contingent upon first succeeding in the challenge to the Judge's conclusion in respect of the relationship.
22. The first ground of challenge – 'Failure to assess the facts of the case on the relevant standard of proof' – in substance invites an inference as to error from the outcome, arguing *"the Judge's conclusions do not demonstrate that he assessed all relevant facts before him cumulatively to the relevant standard of proof"*, in which context it is pleaded that there being a number of factors which the Judge found supported the Appellant's

account of being in a genuine marriage it was "*unclear whether he weighs all relevant evidence before reaching his decision*".

23. There is no substance to this line of challenge.
24. In the premises - whilst not determinative - it is manifest that the Judge made an appropriate self-direction on burden and standard of proof: see paragraph 11.
25. Further it is similarly manifest that the Judge set the 'positive' factors against his adverse assessment of the narrative account of the initial meeting. This is overt at paragraph 51: the adverse finding in respect of the nature of the relationship is reached "*even having regard to all of the other factors in the Appellant's favour*". I am not remotely persuaded that paragraph 51, or anything else in the Decision, demonstrates a misapplication of the standard of proof. The weight to be accorded each aspect of the overall evidence, to inform an ultimate conclusion, was a matter for the Judge. It is plain, in my judgement, that the Judge considered that the adverse factor in respect of the narrative of meeting did indeed outweigh other features of the case - which, as the Judge observed, whilst on their face being positive were subject to caveats. It is not apparent that any aspect of the Appellant's case was omitted from the balancing exercise undertaken by the Judge in evaluating the evidence. I reject the notion that "*it is unclear whether [the Judge] weighs all relevant evidence before reaching his decision*", as pleaded in the first Ground.
26. The second ground of challenge is 'Failure to accord the relevant benefit of doubt'. It seems to me that the formulation here - "*The Judge has failed to accord the parties with the relevant benefit of doubt given the other consistent evidence he acknowledges supports the account*" - is in substance no more than a dispute as to the outcome, and does not reveal any error of law. It adds nothing of substance to the first ground, in the main part being premised on an assertion that because the Judge did not reach a favourable conclusion he must have gone wrong.
27. The additional pleading, that the Judge did not "*consider that memory and recollection are not infallible*", goes no particular way to undermining the clear and cogent reasoning of the Judge in this regard. The Judge's reasoning included, unobjectionably in my view: that the period of the claimed first meeting was a "*remarkable and memorable social period*", and as such a meeting during lockdown would be a major part of the relationship narrative; and that a Costa coffee shop and a Shell service station were "*completely different environments*".

28. The Judge rationally concluded that there was no good explanation for the impossible account of meeting in a coffee shop in April 2020 having been advanced in support of the application, and adequately reasoned his rejection of the attempts by the Appellant and the Sponsor to 'rectify' this narrative.
29. In the circumstances the Judge's observation that the Appellant and the Sponsor otherwise gave broadly consistent accounts as to exchanging details and the subsequent development of their relationship does not undermine his reasoning in respect of rejecting the circumstances of the initial meeting. Nor, for the reasons already explained, can it possibly be said that the Judge disregarded such matters in ultimately concluding that he was not satisfied as to the genuineness of the relationship.
30. I also find there to be no substance in the third ground challenge - 'Failure to give reasons'. The reasons are there - as identified above. It is abundantly plain that the Judge rejected the claim in respect of a genuine and subsisting relationship because he felt that the damage done to the credibility of the Appellant's narrative in respect of the origins of the relationship was not countered by other aspects of the evidence that, in isolation, were more affirming. I do not think that either the Appellant or his representative do not understand the basis of the Judge's decision: rather disagreement is expressed with the decision.
31. I accept the substance of the Rule 24 response, echoed in Mr Avery's submissions: that the challenge herein is one of disagreement with the weight attached by the Judge to different aspects of the evidence, and that no error of law is apparent.
32. I have made reference above to Ms Iqbal having advanced arguments in respect of 'perversity', or irrationality, notwithstanding that, in my very clear view, no such ground was pleaded in the application for permission to appeal, there has been no grant of leave to appeal on such a basis, and there has been no application to amend the Grounds.
33. Ms Iqbal submissions in this regard only emerged in the course of her reply to Mr Avery's submissions, and then only in response to my invitation for her to address those aspects of paragraph 51 of the First-tier Tribunal's decision that suggested the Judge had undertaken an evaluative exercise according weight as he saw fit to the disparate aspects of the evidence, and striking a balance accordingly. Ms Iqbal's response was to suggest that the conclusion was irrational.

34. I indicated to Ms Iqbal that I did not understand the Grounds to have pleaded irrationality or perversity. Ms Iqbal argued that such a submission was encompassed in the Grounds read as a whole.
35. I do not accept that submission. In so far as the Grounds on this issue have headings, they are as set out above: 'Failure to assess the facts of the case on the relevant standard of proof', 'Failure to accord the relevant benefit of doubt', and 'Failure to give reasons'. Not one of those is a pleading of irrationality or perversity. Ms Iqbal acknowledged that neither the word 'perverse' nor the word 'irrational', (or any derivative words such as 'irrationality' or 'perversity') is to be found in the grounds.
36. In the circumstances I do not accept that there was a perversity or irrationality ground of appeal before me. Nor do I think one was intended when the grounds were drafted: had an irrationality or perversity ground been intended one would have expected to see it set out clearly and plainly by experienced counsel. It seems to me that Ms Iqbal was ultimately, almost inadvertently, moved to make this submission during the hearing in dawning recognition of the difficulty presented to her submissions by the apparent balancing exercise undertaken by the Judge at paragraph 51.
37. Even if there had been an irrationality ground formally pleaded and 'live' before me, I can see no basis for concluding that the Judge's decision should be so characterised. It may well be that a different Judge would have struck a different balance in evaluating the evidence in the round; but that is not the test of irrationality. In my judgement there is no realistic prospect of arguing that the Judge's decision was one that no reasonable judge could have reached. The Judge rationally and for good, adequately explained, reasons found both the Appellant and the Sponsor to have been untruthful in their account of how they had met and formed a relationship. It was open to the Judge to conclude that this occasioned such significant damage to the overall credibility of the claim to be in a genuine and subsisting relationship that it was not adequately offset by other aspects of the evidence of a more positive nature (bearing in mind also that the Judge rationally explained why, in his judgement, there were limitations as to the probative value of such other evidence).
38. There being no identifiable error of law in the Decision of the First-tier Tribunal, it must stand accordingly.

Notice of Decision

39. The decision of the First-tier Tribunal contained no material error of law and stands.
40. Mr Festim Rada's appeal remains dismissed.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

24 August 2023