



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001956

First-Tier Tribunal No: EA/50668/2020
IA/01944/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1st May 2024**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**Atif Ali
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali of Counsel, instructed by M & K Solicitors
For the Respondent: Mr T Melvin, Senior Home Officer Presenting Officer

Heard at Field House on 26 March 2024

DECISION AND REASONS

1. In a decision promulgated on 15 August 2023, I found an error of law in the decision of First-Tier Tribunal Judge Parkes promulgated on 5 August 2021 in which the Appellant's appeal against the decision to refuse his application for an EEA Residence Card as the durable partner of an EEA national dated 4 November 2020 was dismissed. The decision is annexed, setting out the reasons and that the First-Tier Tribunal's decision was set aside. This is the re-making of the Appellant's appeal.
2. The Appellant is a national of Pakistan, born on 7 June 1991 who claims to have entered the United Kingdom in 2005. He made an application for an EEA Residence Card on 3 October 2020.
3. The Respondent refused the application in a decision dated 4 November 2020 on the basis that there was insufficient evidence to establish that the Appellant was the durable partner of an EEA national. The Respondent expected that there

would be evidence of cohabitation for a long-term period in a relationship similar to marriage; but the only evidence of cohabitation was very recent and there was no evidence of any joint finances, commitments or responsibilities. The photographs were not accepted as sufficient evidence of a durable relationship.

The appeal

4. The Appellant's written statement, signed and dated 2 October 2023 sets out details of his relationship with Cristiana Maria Nedelcu (the "Sponsor"). He first met her in November 2018 when he started living at her address, with their relationship beginning on 17 April 2019, they had an Islamic marriage on 5 December 2019 and were cohabiting as a couple from April 2020. The couple were married in a civil ceremony on 20 July 2021.
5. The Appellant attended the oral hearing, adopted his written statement and gave oral evidence through a court appointed Punjabi interpreter. He confirmed that prior to this application for an EEA Residence Card, the Appellant had been in the United Kingdom illegally since 2005 and had only made one previous application for leave to remain, the details of which he could not remember.
6. At the time the Appellant's relationship with the Sponsor began, she was 17 years old and at college, studying. The Sponsor willingly converted to Islam for their Islamic marriage and he assisted in explaining some things to her about Islam. She remains a Muslim, but does not attend mosque. The Sponsor is working and supporting the Appellant, although he would like to work and support her as she has medical problems with her stomach (some kind of digestive problem with stones for which she on the waiting list for surgery).
7. The Appellant has family in Pakistan, his father and siblings, his mother having passed away. He is in regular contact with them and has introduced the Sponsor to them online, translating for both sides and there are plans to visit Pakistan together once the Appellant's immigration status is sorted out. The couple plan to have a family in the future.
8. At the time of the Islamic marriage, the Sponsor was only 17 years old and they did not start cohabiting as a couple until April 2020 when she turned 18. The Appellant said that he was waiting for her to be more mature before they cohabited and in the period up until then, they were getting to know each other better. They underwent an Islamic marriage before then because for religious reasons, they could not otherwise have too much physical contact. The civil ceremony was applied for in the summer of 2020, with an initial booking for 2 March 2021 cancelled due to Covid-19 restrictions.
9. The Sponsor's written statement signed and dated 2 October 2023 contains a materially similar account of her relationship with the Appellant to his statement referred to above.
10. The Sponsor attended the oral hearing, adopted her written statement and gave oral evidence through a court appointed Romanian interpreter. Her relationship with the Appellant started when she was 17 years old, when she was studying and working. At the time the relationship started, the Sponsor knew that the Appellant was in the United Kingdom illegally and pursued it anyway as she was in love. The Sponsor denied marrying for money or any other incentive and confirmed her mother approves of the relationship and is happy for her.

11. The Sponsor converted to Islam for her Islamic marriage. It was a religion that she had been interested in for some time and had been learning about and the Appellant was able to help her learn more about Islam. The Sponsor does attend mosque but not if she is working and she and the Appellant pray at home together. The Islamic marriage was early on for religious reasons and the couple started cohabiting later as the Sponsor's mother wanted her to wait until she was 18 years old. The Appellant is unable to work, but helps around the home and with emotional support. The couple have plans to have children and work together for their family.
12. The Sponsor has met the Appellant's family online and speaks to them when she is not working, probably every 2 or 3 days. She would like to visit them in person with the Appellant and to get to know them face to face.
13. There was also a written statement from Mr Mohammed Ibrar Karim, signed and dated 2 October 2023. Mr Karim is a friend of the Appellant who was a witness at his Islamic marriage and invited to the legal ceremony (but unable to attend for family reasons). He attests to the relationship between the Appellant and Sponsor as a genuine one. Mr Karim attended the oral hearing and adopted his written statement without any cross-examination.
14. In closing submissions on behalf of the Respondent, Mr Melvin relied on the reasons for refusal letter and his skeleton argument. The focus in this appeal is on the Appellant's relationship between April 2020 when he started cohabiting with the Sponsor and the specified date of 31 December 2020, a period of some eight months.
15. Mr Melvin submitted that the Sponsor was very young at the time the relationship started with the Appellant, who was here unlawfully with every incentive to being a relationship with someone with status and that even following their Islamic marriage, the Sponsor's mother deemed her too young to cohabit with the Appellant before she turned 18. The Sponsor's mother had not made any up to date statement in support of this appeal about the relationship.
16. It was accepted that there is evidence that the Appellant has remained living in the same house as the Sponsor to date and of a legal marriage in 2021. It was further accepted that although there was no evidence of any plan to legally marry earlier, there were difficulties around that time due to Covid-19 restrictions, albeit nothing to support an application having been made before 31 December 2020.
17. The Respondent does not take any issue with the current relationship between the Appellant and the Sponsor, nor that this is a genuine and subsisting relationship that has continued since their marriage with joint intentions for the future. Mr Melvin did however raise serious concerns about the Appellant's intentions with a very young Sponsor at the relevant time which should be considered; albeit he accepted that events which occurred after 31 December 2020 including the legal marriage could be considered relevant; there being no credibility issues taken with the later evidence.
18. In closing on behalf of the Appellant, Mr Ali relied on his earlier skeleton argument and submitted that the original refusal was based on undue suspicion and assumptions, in which the Respondent had failed to engage with the evidence of a durable relationship at that time. He relied on what was described as a wealth of evidence supporting this, although the majority of the evidence

post-dated 31 December 2020. The Appellant and the Sponsor have now been in a relationship for almost five years; approved of by the Sponsor's mother and there are a number of letters of support from other friends and family supporting their claim to have been in a durable relationship at the relevant time. There is also documentary evidence, including a water bill in the period prior to 31 December 2020 and confirmation that their initial civil marriage ceremony was booked on 11 December 2020 for 2 March 2021 but cancelled due to Covid-19 restrictions.

19. Overall Mr Ali submitted that the Appellant and Sponsor were both credible witnesses, without any contradictions or inconsistencies in their evidence which was as to a genuine relationship starting in April 2019. The further evidence post-dating 31 December 2020 could be relied upon to throw light on the relationship with ongoing cohabitation and joint responsibilities; none of which was challenged.

Findings and reasons

20. The sole issue in this appeal is whether the Appellant was in a durable relationship for the purposes of Regulation 8(5) of the Immigration (European Economic Area) Regulations 2016 as at 31 December 2020. The Appellant made his application prior to that date and is therefore protected in this appeal by transitional provisions such that these Regulations continue to apply despite their revocation on that date.
21. The evidence as to the Appellant's relationship prior to 31 December 2020 is largely, undisputed, the issue is whether it amounts to a durable relationship. That is routinely considered by the Respondent to be a relationship akin to marriage in which the parties have been cohabiting for a period of two years; although that is a rule of thumb rather than a precise requirement which must be met in any particular case.
22. The Appellant's relationship began in April 2019 and the couple underwent an Islamic marriage ceremony in December 2019; following which they did not cohabit as a couple until April 2020. The Appellant states that this was because the Sponsor was maturing during this time and they were getting to know each other better; although the Sponsor's evidence was that this was because her mother did not approve of cohabitation before she was 18 years old. On either view, I do not find that prior to April 2020 there was a durable partnership given that the relationship was fairly new and there was no cohabitation or any evidence at all of joint responsibilities. I take the Islamic marriage into account but do not consider that for these wider reasons, that is evidence by itself of a durable partnership.
23. As to the period between April 2020 and the end of December 2020, there is very little documentary evidence in support of the relationship and cohabitation as a couple. There is only one joint water bill from August 2020 and the other evidence of each person living at the same property does not establish any kind of relationship given that the Appellant had in any event been living in the property since 2018 before the relationship started. There are a number of photographs which do not take the claim as to whether it was a durable partnership much further. I do take into account that the Appellant and Sponsor had applied for their civil marriage ceremony in December 2020 which showed some intention as to their future together, which has since come to pass.

24. I also take into account that there is no formal written statement from the Sponsor's mother and she did not attend the hearing to give oral evidence; even though she would be uniquely placed to give evidence as to the nature of the relationship and cohabitation at the relevant time as she lived at the same property. The letter from her dated 30 September 2023 says nothing of when the relationship started or when the couple were cohabiting as such (rather than the Appellant simply living in the same property), nor does it directly address the time period relevant to this appeal. The other written statements in support are similarly lacking in detail (and in some cases, are in almost identical form) as to the nature of the relationship up to 31 December 2020 and as such little weight can be attached to them when determining whether the relationship was a durable partnership as at 31 December 2020.
25. On behalf of the Respondent, Mr Melvin raised concerns as to the Appellant's motive at the time the relationship started due to his immigration status and significant age gap/young age of the Sponsor. However, this is not a case in which the Respondent has ever refused the application on the basis that it was a durable partnership of convenience and it was expressly confirmed at error of law stage that no such issue had been raised by the Respondent. The concerns raised would more be more relevant to the issue of a durable partnership of convenience and are not directly relevant to the issue of whether there was a durable partnership as at 31 December 2020.
26. As accepted as appropriate by both parties, I also attach some weight to the circumstances after 31 December 2020, including their civil marriage and continuing cohabitation, neither of which (nor the nature of the relationship as at the date of hearing) were challenged by the Respondent. These subsequent matters can indirectly assist in supporting the Appellant's claim up to the relevant date, particularly in circumstances where there had been an application for the civil marriage ceremony prior to it.
27. Overall, whilst on the balance of probabilities I find that the Appellant and the Sponsor were in a relationship as at 31 December 2020 and were in a genuine and subsisting marriage at the date of hearing before me (there being no dispute on this by the Respondent), I do not find that they have established that their relationship at the required time up to 31 December 2020 was a durable partnership for the purposes of the Immigration (European Economic Area) Regulations 2016. Overall, the evidence as to the nature and quality of that relationship at the relevant time is very thin and amounts to little more than a relatively short period of some eight months cohabitation, an intention to legally marry which was realised later in 2021 and one shared utility bill, which could be because of the relationship but could equally be because as a person already living in the house, the Appellant was sharing one of the bills. Whilst the relationship has undoubtedly developed further since the end of December 2020 I do not find that it was at that time of sufficient longevity, seriousness or similarity to a marriage to meet the requirements as a durable partnership by that time.

Notice of Decision

The making of the decision of the First-Tier Tribunal did involve the making of a material error of law, for the reasons set out in the decision annexed and as such it was necessary to set aside the decision.

The appeal is remade as follows:
The appeal is dismissed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th April 2024

ANNEX



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

Case No: UI-2022-001956

First-tier Tribunal No: EA/50668/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ATIF ALI
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali of Counsel, instructed by M & K Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 8 August 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Parkes promulgated on 5 August 2021, in which the Appellant's appeal against the decision to refuse his application for an EEA Residence Card as the durable partner of an EEA national dated 4 November 2020 was dismissed.
3. The Appellant is a national of Pakistan, born on 7 June 1991, who made an application for an EEA Residence Card as the durable partner of a Romanian national on 3 October 2020. The Respondent refused the application the basis

that there was insufficient evidence of a durable partnership. In particular, it was claimed that there had been cohabitation since 2018, but only very recent evidence of the same and no evidence of any joint finances, commitments or responsibilities. The photographs were not considered as adequate evidence. The Respondent expressly stated that there was no consideration of whether the Sponsor was exercising treaty rights in the United Kingdom given the application had been refused for other reasons.

The appeal

4. The Appellant sought permission to appeal on five grounds, albeit permission was granted expressly only on grounds one and two and refused on grounds three and four. There was no express consideration either in the decision heading or the substance of the grant of permission dealing with the fifth ground, but without its express exclusion, I indicated to the parties that we would proceed on the basis that this fifth ground had also been granted permission (which was agreed by both).
5. The grounds on which permission was granted are therefore that the First-tier Tribunal materially erred in law in (i) failing to have sufficient regard to or refer to the documentary or witness evidence relied upon; (ii) failing to make any credibility findings in relation to the evidence of the Appellant, the Sponsor or any of their friends and family (save for in relation to one letter from the Sponsor's younger sister); and (iii) failing to consider that the Respondent had never claimed that this was a relationship or marriage of convenience such that there was no burden of proof to shift to the Appellant.
6. At the oral hearing, Ms Ahmed, entirely appropriately, conceded that there was a material error of law in the First-tier Tribunal's decision as to the final ground of appeal. The Respondent's refusal was on the basis that there was insufficient evidence of a durable relationship and no issue of a relationship or marriage of convenience was asserted or relied upon. It seems however that the latter was at the forefront of the First-tier Tribunal's mind given the references to marriage of convenience and genuineness of a relationship in paragraphs 6 and 7 of the decision, as well as more prominently in paragraph 15 where the Judge finds that he is not satisfied that the Appellant has discharged the evidential burden that has shifted to him, with the evidence showing that this is a relationship of convenience. This assesses the evidence through the wrong legal lens and fails to make the findings required as to whether this is a durable relationship.

Findings and reasons

7. I entirely agree with both parties that the First-tier Tribunal materially erred in law in this appeal. The sole issue before the First-tier Tribunal was whether there was a durable relationship, but that question was never addressed and instead the appeal decided on the different basis that there was a relationship of convenience, even though that had never been asserted by the Respondent. As such, there was no legal or evidential burden that could then have shifted to the Appellant to rebut. The whole decision is focused on the wrong question and is confused as to the issue and relevant legal test. For this reason it must be set aside and the appeal determined de novo and it is unnecessary to consider the first two grounds of appeal separately. Further directions are given for relisting this hearing below.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions

1. The appeal to be relisted on the first available date before UTJ Jackson for a face to face hearing with a time estimate of 2-2.5 hours. A Punjabi and a Romanian interpreter are required.
2. Any further evidence on which the Appellant wishes to rely must be filed and served no later than 14 days before the relisted hearing. An up to date written statement is required to stand as evidence in chief for any person giving oral evidence. The Appellant's solicitors to confirm by the same time who will be attending the hearing to give oral evidence.
3. Any further evidence on which the Respondent wishes to rely must be filed and served no later than 7 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th August 2023