



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

Case No: UI-2022-002188  
FtT No: EA/12822/2021

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On 17<sup>th</sup> of January 2024

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**  
**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ANABEL OWUSU ANKRAH**  
**(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Presenting Officer

For the Respondent: Mr M Afzal, Legal Representative, IIAS Solicitors

**Heard at Field House on 8 January 2024**

## **DECISION AND REASONS**

### **Introduction**

1. The parties are referred to as they were before the First-tier Tribunal: Mrs Ankrah as the “appellant” and the Secretary of State for the Home Department as the “respondent”.
2. The respondent appeals a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Birrell) sent to the parties on 10 February 2022 allowing the appellant’s appeal in respect of an adverse EU Settlement Scheme (‘EUSS’) decision.
3. The appellant failed to respond to directions of Upper Tribunal Judge O’Callaghan sent to the parties on 2 October 2023, or to engage with the respondent’s service of a draft consent order on 3 November 2023. Consequent to the failure by the appellant to comply with directions, the appeal was listed before the panel for disposal.
4. Somewhat surprisingly, following the failure of the appellant and her legal representatives, IAS Solicitors, 812 Stockport Rd, Levenshulme, Manchester M12 4QL to engage with directions, Mr Afzal attended the hearing. The panel was informed that Mr Afzal was unaware of the October directions, and additionally he was not in possession of the appellant’s bundle filed with the First-tier Tribunal.

### **Brief Facts**

5. The appellant is a national of Ghana. She is aged 24 and resides with her parents in Switzerland. Her father is an Italian national. Her sponsor is her husband, Mr Patterson Ankrah Twumasi, also an Italian national, who resides in the United Kingdom.
6. The appellant and sponsor state that they were introduced through a family friend in January 2020 and were initially in personal contact through phone calls and social media. They first met in Switzerland on 29 January 2020. The sponsor booked a second journey to Switzerland in March 2020 but was unable to travel due to the global COVID-19 pandemic and attendant travel restrictions. The couple continued to remain in contact by telephone and social media.

7. The couple decided to marry with their ceremony to be held in Italy where the sponsor's family reside. They filed a Notice of Marriage on 6 November 2000 for their civil wedding to take place on 20 November 2000. However, by this date lockdown restrictions had been imposed in Italy and their civil wedding was rescheduled to 9 January 2021. In the meantime, the appellant and sponsor held a traditional wedding in the presence of family and friends on 12 December 2020. The couple married in Italy on 9 January 2021.

### *Application and decision*

8. On 12 April 2021, the appellant applied for an EUSS Family Permit under Appendix EU (Family Permit) to the Immigration Rules. The respondent refused to issue an EUSS Family Permit by a decision dated 19 July 2021. We consider it helpful to detail the refusal below:

"On 12 April 2021 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules ...

You have stated that the family relationship of the EEA citizen sponsor to yourself is 'spouse/civil partner'. As evidence of this relationship you have provided an Italian marriage certificate from January 2021 and some photographs from your wedding.

In the annex of Appendix EU (Family Permit) to the Immigration Rules the following definition for a spouse/civil partner:

the spouse or civil partner of a relevant EEA citizen, and:

(i)(aa) the marriage was contracted or the civil partnership was formed before the specified date; or

(bb) the applicant was the durable partner of the relevant EEA citizen before the specified date (the definition of 'durable partner' in this table being met before that date rather than at the date of application) and the partnership remained durable at the specified date; and

(ii) the marriage or civil partnership continues to exist at the date of application;

As your marriage was not contracted/civil partnership was not formed before the 'specified date' (11PM GMT, 31 December 2020), it must be demonstrated that you were the 'durable partner' of the relevant EEA citizen before the specified date.

In the annex of Appendix EU (Family Permit) to the Immigration Rules 'durable partner' is defined as:

a) the person is, or (as the case may be) was, in a durable relationship with the relevant EEA citizen (or, as the case may be, with the qualifying British citizen), with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and

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; and

c) it is, or (as the case may be) was, not a durable partnership of convenience; and

d) neither party has, or (as the case may be) had, another durable partner, a spouse or a civil partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person's relationship with that party.

You have provided no further evidence to confirm your relationship was existing prior to your marriage date. I would need to see sufficient evidence that you were durable partners prior to your marriage.

Given the above, I am not satisfied that you have provided adequate evidence that you were the durable partner of your sponsor prior to the specified date and then contracted a marriage/formed a civil partnership after the 'specified date'. Therefore, I am not satisfied

that you are a 'family member of a relevant EEA Citizen' as so defined in Appendix EU (Family Permit) to the Immigration Rules.

Your application is refused.”

9. The relevant provisions of the Immigration Rules were clearly identified to the appellant.

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

10. The appeal was heard by the Judge sitting at Manchester on 20 January 2022. The appellant was represented by Ms G Patel, Counsel, instructed by her former legal representatives.

11. The decision is concise, and the reasoning is short:

“20. I accept that whilst the Civil Wedding was postponed, the Appellant and sponsor had their traditional wedding ceremony in the presence of their parents, friends and family members on the 12<sup>th</sup> December 2020.

21. I accept therefore that the Appellant and Sponsor have produced significant, clear and persuasive evidence that they were in a durable relationship from the time of their first meeting. They evidenced the durability of that relationship by contact which was inevitably impacted by the Covid pandemic and they tried to get married prior to the specified date. I accept that their relationship led eventually to a formal ceremony of marriage and endures to date.

...

23. I find the Appellant has discharged the burden of proof on her to show that the terms of Appendix EU have been met.”

12. The Judge considered the appeal without the benefit of the Upper Tribunal decisions in *Batool (Family Members: EU Exit)* [2022] UKUT 219 (IAC), [2022] Imm AR 1382 (19 July 2022) and *Celik (EU Exit: Marriage: Human Rights)* [2022] UKUT 220 (IAC), [2022] Imm AR 1438 (19 July 2022), as well as the Court of Appeal judgment in *Celik v. Secretary of State for the Home Department* [2023] EWCA Civ 921 (31 July 2023).

### **Grounds of Appeal**

13. By grounds of appeal dated 17 February 2022 the respondent contended that the Judge materially erred in law in concluding that on the facts advanced the appellant had established she was in a durable relationship as defined by Appendix EU (Family Permit). The conclusion reached was said to be irrational.
14. Upper Tribunal Judge Hanson granted permission to appeal by a decision dated 23 August 2022 observing, *inter alia*:

“There is arguable merit in the ground asserting that the Judge’s conclusion there was significant evidence of a durable relationship with the sponsor before the specified date is infected by material misdirection of law in light of the definition of a durable partner contained within annex 1 of Appendix EU (Family Permit).”

## **Law**

15. Whilst the United Kingdom was a member of the European Union, it was bound to give effect to European Union law including the law governing freedom of movement for EEA citizens and their family members. The United Kingdom gave effect to Union law by means of the European Communities Act 1972.
16. Article 2 of the Citizens’ Directive (Directive 2004/38/EC) defines a “family member” as, *inter alia*, the spouse or partner of a Union citizen.
17. Article 3(2)(b) of the Directive defines as a beneficiary of the rights enjoyed by an EEA citizen (“any other, or extended, family members”) a “partner with whom the Union citizen has a durable relationship, duly attested”.
18. There is a fundamental distinction between a “family member” and “any other family members” for the purposes of the Directive.
19. The United Kingdom left the European Union on 31 January 2020 and repealed the 1972 Act with effect from that date.
20. Article 126 of the Withdrawal Agreement provided a transition or implementation period ending on 31 December 2020.
21. Article 127 provided that European Union law was applicable to, and in, the United Kingdom during the transition period. That was given effect in domestic law by the provisions of section 1A of the European Union

(Withdrawal) Act 2018. Consequently, the provisions of European Union law governing free movement continued to have effect within the United Kingdom until 11 pm (2300 GMT) on 31 December 2020.

22. The Upper Tribunal confirmed in *Celik* that a judge does not possess power to disregard the terms of the Withdrawal Agreement.
23. The EUSS is an immigration regime of the United Kingdom introduced by the respondent in 2019, by means of Appendix EU and Appendix EU (Family Permit) of the Rules. Appendix EU enables EU, EEA and Swiss citizens, and their family members, resident in the United Kingdom by 31 December 2020, to obtain the immigration status required to work and live in this country. Appendix EU (Family Permit) sets out the basis on which a non-EEA citizen will, if they apply under it, be granted an entry clearance to join a relevant EEA citizen in the United Kingdom or to accompany them to this country.
24. Definitions of “durable partner” and “family member of a relevant EEA citizen” are provided in Annex 1 to Appendix EU (Family Permit) and detailed in the respondent’s decision letter above.

## **Decision**

25. Ms Patel accepted before the Judge that the appellant and the sponsor were not married by the specified date. We consider this concession properly made. At Annex 1 a “family member of a relevant EEA citizen” is defined as, *inter alia*:

“the spouse ... of a relevant EEA citizen, and ... the marriage was contracted ... before the specified date.”
26. The “specified date” is defined in the same Annex as:

“2300GMT on 31 December 2020.”
27. The appellant accepts that she was not civilly married to the sponsor until 9 January 2021, after the specified date.
28. The case as advanced before the First-tier Tribunal was that the appellant was the durable partner of the sponsor prior to the specified date. Annex 1 additionally defines in respect of a “family member of a relevant EEA citizen”:

“the spouse ... of a relevant EEA citizen, and ... the applicant was the durable partner of the relevant EEA citizen before the specified date (the definition of ‘durable partner’ ... being met before that date rather than at the date of application) and the partnership remained durable at the specified date and the marriage ... continues to exist at the date of application.”

29. We observe a relevant definition of durable partner under Annex 1:

“The applicant is or ... was ... in a durable relationship with the relevant EEA citizen ... with the couple having lived together in a relationship akin to a marriage ... for at least two years (unless there is other significant evidence of the durable relationship) ...”

30. The appellant cannot establish on the facts as existing that she lived with her sponsor in a relationship akin to marriage for two years prior to the specified date.

31. The issue before the Judge was whether there was significant evidence of the durable relationship. The Judge concluded that the couple “have produced significant, clear and persuasive evidence that they were in a durable relationship from the time of their first meeting”. Having considered the evidence in the round, we agree with the respondent that this conclusion is irrational.

32. On its face the evidence presented is that the couple met in January 2020. A receipt from the Hotel Allegro Bern establishes that the sponsor arrived at the hotel on 28 January 2020 and left on 29 January 2020. The appellant has filed a train ticket confirming that the sponsor travelled from Milan to Bern on 28 January 2020. The couple met for the first time on 29 January 2020. A social media message confirms that the sponsor left Bern by train on the same day and returned to the United Kingdom on 31 January 2020.

33. We further observe that in paragraph 4 of her December 2021 witness statement the appellant confirms that she fell in love with the sponsor “in the middle of 2020”. The sponsor details at paragraph 11 of his witness statement, dated 17 December 2021, that the couple started dating three months after their meeting in January 2020. Additionally, at paragraph 16 he confirms that the relationship commenced in the “middle of 2020”.

34. We are satisfied that no reasonable judge could conclude that a durable relationship commenced at the first meeting of the couple on 29 January



2020 when both the appellant and sponsor accept that their relationship commenced some months later.

35. The primary conclusion underpinning the Judge's reasoning is subject to material error of law. We set aside the decision in its entirety.

### **Re-making the Decision**

36. With the consent of Mr Afzal and Mr Melvin we proceeded to re-make the decision at the hearing.
37. Mr Afzal attended the hearing with the intention of submitting that the traditional marriage undertaken in Italy in December 2020 established that the appellant and sponsor were married before the specified date. He initially informed us that considered Ms Patel to have been mistaken when conceding that the couple were not married by the specified date, but subsequently withdrew the assertion in relation to a mistake having been made by counsel.
38. In the law of England and Wales the general rule is that the formal validity of a marriage is governed by the law of the country where the marriage was celebrated ("the *lex loci celebrationis*"). In general the law of a country where a marriage is solemnised must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been constituted: *Sottomayor v De Barros (No.1)* (1877) 3 P.D. 1, 5 (CA) confirmed in *Awuku v. Secretary of State for the Home Department* [2017] EWCA Civ 178, [2017] Imm. A.R. 1066. In *CB (Validity of Marriage: proxy marriage) Brazil* [2008] UKAIT 00080 the Upper Tribunal rejected a submission that different rules should be applied to the legal framework governing validity of marriage when the issue arose in the context of immigration law. The Tribunal reaffirmed that the formal validity of a marriage is governed by the *lex loci celebrationis*.
39. Mr Afzal was unable to identify any document filed with the Upper Tribunal establishing the legal nature of the traditional marriage under Italian law. Instead, he sought at the outset of the hearing to rely upon a document prepared by Neil R McDonald, Senior Legal Specialist, Law Library, US Library of Congress, dated August 1975, entitled "Tribal Marriage and Divorce in Ghana". The document does not address the status under Italian law of a traditional wedding ceremony conducted in Italy.

40. During discussion, Mr Afzal confirmed that he had no instructions to advance the submission that the traditional marriage in Italy was a valid marriage under Italian law. Rather it was a point that came to him when preparing for the hearing. He observed that traditional marriages are lawful in Ghana. He accepted that he was not in possession of the appellant's bundle and was unable to direct the panel to any document establishing the validity of the traditional marriage as governed by the *lex loci celebrationis*. After reflection, Mr Afzal withdrew the submission.
41. Mr Afzal advanced no submission that the appellant could establish significant evidence of having been in a durable relationship at the specified date. We observe that Ms Patel's skeleton argument before the First-tier Tribunal provided very little if any basis as to why the evidence relied upon was significant.
42. Despite Mr Afzal's silence, we decide it is appropriate that we consider the appellant's appeal in the alternative.
43. To secure an EUSS Family Permit the appellant was required to meet the terms of the Withdrawal Agreement and the relevant Immigration Rules. Consequent to being married to the sponsor after the specified date, the couple are required to have resided with each other in a relationship akin to a marriage for at least two years before that date or, alternatively, establish "other significant evidence of the durable relationship". The couple cannot meet the first requirement, having only met less than 12 months previously and not resided with each before the specified date.
44. We conclude that the alternative is also not met by the appellant. The couple met in January 2020. The evidence filed in this appeal provides very limited detail as to how and when they met thereafter and prior to the specified date. We acknowledge that cultural norms may well have led to the couple not living together before marriage, but the relationship appears to have been primarily conducted by modern means of communication during the course of the year. Both the appellant and sponsor's witness statement make no express reference to the couple physically meeting between January 2020 and their traditional wedding on 12 December 2020. We observe that for a time Swiss and United Kingdom borders were closed during the year but there were several months when travel was permitted in and out of both countries.

45. We accept the couple had an intention to marry on 20 November 2020, which was postponed consequent to a global pandemic. However, the definition of durable partner requires more than an intention to marry. If that were a sufficient requirement in itself, it would be established by the definition.
46. There is evidence of regular communication, showing affection, but it provides little if any discussion as to plans concerning the practicalities of living together in the United Kingdom or elsewhere. There is no evidence of shared financial responsibility, nor joint responsibility for a child, suggestive of a durable relationship.
47. The traditional wedding is evidence of family approval to the relationship, but neither the appellant nor the sponsor detail that they were residing together in a manner akin to marriage before or after this time. We note that limited evidence has been provided as to the interaction of the couple between the traditional wedding and the New Year. We observe that by 19 December 2020 the sponsor is messaging the appellant that he is Amsterdam. He was home in the United Kingdom by 20 December 2020. We note the requirement that there be significant evidence of durable relationship. We conclude that the traditional marriage alone, with little, if any, attendant evidence as to their lives at the time, some three weeks before the specified date, is insufficient to establish that the relationship had taken on the characteristics of durability by the specified date.

### **Notice of Decision**

48. The decision of the First-tier Tribunal sent to the parties on 4 September 2023 is subject to material error of law. The decision of the First-tier Tribunal is set aside in its entirety.
49. The decision is re-made. The appellant's appeal is dismissed.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**10 January 2024**