



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002399
First tier number: EU/50716/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11th December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

ORELIO DE AGUIAR DOS SANTOS

Respondent

Representation:

For the Appellant: Ms Blackburn, Senior Presenting Officer
For the Respondent: In person

Heard at Royal Courts of Justice (Belfast) on 4 December 2024

DECISION AND REASONS

1. The appellant, a citizen of Venezuela who possesses a Portuguese passport, applied under the EUSS Scheme for settlement as the partner of Maria Elena de Oliveira Pereira (the sponsor), an EU citizen. He was refused by decision of the Secretary of State dated 8 November 2023 and he appealed to the First-tier Tribunal which allowed his appeal. The Secretary of State now appeals to the Upper Tribunal.
2. The judge of the First-tier Tribunal noted [19] that the sponsor had been granted indefinite leave to remain on 6 August 2019. At [20], he wrote:

The difficulty appears to be that the appellant has stated that he is the spouse of the sponsor and hence the respondent has considered the

application through that prism. In fact, there are not spouses but rather partners. As a result of the misconception by the parties, the respondent has not noted that in fact the sponsor has a documented right of permanent residence as per the above copy letter. That being the case, then the appellant would appear to be in a position to meet the requirements for status in the UK.

3. The challenge to the judge's decision advanced by the Secretary of State complains of an inadequacy of reasoning; in particular, that the judge 'failed to provide any reasoned findings that engage with the requirements of Appendix EU and the definition of "durable partner" contained within Annex 1 of Appendix EU.
4. I find that the First-tier Tribunal did err in law such that its decision cannot stand. The judge's reasons at [20] are inadequate. Whilst the Upper Tribunal should hesitate before interfering with the findings of the First-tier Tribunal which has heard the evidence and whose task it is to assess that evidence robustly, the judge has not made any attempt to explain why the evidence indicates that the appellant and sponsor meet the requirements for being in a durable relationship. To say no more than that 'the appellant would appear to be in a position to meet the requirements for status in the United Kingdom' leaves the parties (and in particular, the Secretary of State, as loser in the appeal) unclear as to reasons for the outcome. It is unclear exactly which requirements and status the judge has in mind. In the circumstances, I set aside the decision.
5. As the appellant and sponsor were at court and had the services of a Portuguese interpreter, I proceeded immediately with the resumed hearing. Both appellant and sponsor were cross examined by Ms Blackburn.
6. The burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am wholly satisfied that the oral evidence of the appellant and sponsor was truthful and consistent; Ms Blackburn did not submit that it was otherwise. It is agreed by the parties that the appellant should succeed if he is able to prove that he and the sponsor are in a durable relationship for the purposes of the EUSS Scheme.
7. A durable partner applying under the EU Settlement Scheme must show that they were in a durable relationship prior to 31 December 2020. I find as a fact that the durable relationship between the appellant and sponsor began, as they both stated in evidence, in July 2018 and that since that date the relationship has been serious and committed (I was told that the appellant and sponsor first met in their teens). The respondent's

guidance on durable relationships makes it clear that cohabitation is not required although I find that the appellant and sponsor spent the majority of the relevant period prior to the making of the application under the scheme living together either in France or at the sponsor's home in the United Kingdom. I accept that the sponsor chose not to move to France permanently because she did not wish to disturb her child's education in the United Kingdom whilst the appellant has a business in France at which he needed to spend time. Ms Blackburn queried whether there was 'significant evidence' of ties between the appellant and sponsor such as the sharing of domestic financial payments. Notwithstanding that such payments, whilst they do occur, were intermittent given the couple's living arrangements, I am satisfied on the evidence that the appellant and sponsor have been since 2018 in a durable relationship as defined under the EUSS Scheme. Accordingly, I allow the appeal against the decision of the Secretary of State.

Notice of Decision

1. I set aside the decision of the First-tier Tribunal.
2. I have remade the decision. The appeal of ORELIO DE AGUIAR DOS SANTOS against the decision of the Secretary of State dated 8 November 2023 is allowed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 4 December 2024