IN THE UPPER TRIBUNAL Case No: UI-2024-001920
IMMIGRATION AND ASYLUM CHAMBER
First-Tier Tribunal No: HU/52811/2024
LH/00794/2024

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On 2 January 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK
DEPUTY UPPER TRIBUNAL JUDGE D CLARKE

Between

IGLI COLLAKU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Iqbal of Counsel, instructed by Connaught Law.
For the Respondent: Ms Nwachuku, Senior Home Office Presenting Officer.

Heard at Field House on 2 December 2024

DECISION AND REASONS

INTRODUCTION

1. The Appellant appeals against the Decision of First-Tier Tribunal Judge Eldridge, promulgated on 18 March 2024 ("the Decision"), dismissing his appeal against the Respondent's decision dated 22 February 2023 refusing his Human Rights claim.

RELEVANT BACKGROUND

2. The Appellant is an Albanian national, born on 26 May 2002, who entered the UK illegally in a lorry on 1 October 2019.

3. Under cover of letter dated 27 January 2023, the Appellant submitted an FLR (FP) application dated 13 January 2023. The Application form relied upon a relationship between the Appellant and his unmarried partner, Ms Ionna Raluca Udrea, who is a Romanian national, born on 6 July 1989 with EUSS pre-settled status. The application form, under the section "Non-Applying Children", referred to Ms Udrea's child ("EC"), and stated that Ms Udrea had sole responsibility for the child.

4. The cover letter claimed that the Appellant met Ms Udrea in January 2020 and that "following this their relationship started and they started living together […] since the end of November 2020". The cover letter further claimed that the Appellant's relationship with EC, "has become more of a father, rather than a stepfather, to the child […] he considers himself to be her father".

5. The Respondent refused the Appellant's application in a refusal letter ("RFRL") dated 22 February 2023. The Respondent found, in terms of family life with Ms Udrea, that the eligibility requirements, E-LTRP 1.1 – 1.2 of Appendix FM, were not met because Ms Udrea did not meet the definition of "Partner" under Gen 1.2,

> "From the information provided it appears that you have not been living with Ioana-Raluca Udrea in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application."

6. The RFRL went on to find that the Appellant could not meet EX.1(b) of Appendix FM because Ms Udrea did not meet the definition of a "Partner" under Gen 1.2, and the Appellant could not meet EX.1(a) because he did not have "Parental Responsibility" for EC.

7. Given that the requirements of Appendix FM were not met, the RFRL considered whether there were "unjustifiably harsh consequences" that would render refusal of the application a disproportionate breach of Article 8. The RFRL took into account the Appellant's claimed family and private life but noted that the Appellant had commenced his relationship in the UK in full knowledge that he was here illegally. The RFRL further took into account s.55 of the Borders, Citizenship and Immigration Act 2009 but found that the Appellant did not have

parental responsibility for EC and that EC could remain in the UK with her mother. The RFRL therefore concluded that refusal of the application was proportionate, with regards to the claimed family life.

8. In terms of the Appellant's reliance upon his Private life in the UK, the RFRL considered the Appellant's limited time in the UK and his cultural ties to Albania and concluded that there would be no "very significant obstacles" to the Appellant's re-integration in Albania.

9. The Appellant appealed the Respondent's decision to the First-Tier Tribunal and the matter came before First Tier Tribunal Judge Eldridge on 5 March 2024. In a Decision dated 18 March 2024 (the "Decision"), the FTTJ dismissed the Appellant's appeal.

10. The FTTJ records at [8] that the Appellant had lodged an additional 247 page bundle, which was "detailed in nature". After hearing submissions on whether the bundle should be admitted into evidence, he concluded, "I informed the parties that I was not prepared to admit these documents. Mr Iqbal accepted that and did not seek an adjournment".

11. The FTTJ then went on to find at [25], in the light of the oral witness evidence, that the Appellant and Ms Udrea "had lived together since November 2020" and that EC had lived with them throughout the period of cohabitation. The FTIJ found it more likely than not that a bond had been created between the Appellant, Ms Udrea and EC but questioned the strength of that bond. Turning his mind to the alleged parental relationship between the Appellant and EC, the FTIJ noted the paucity of evidence to support the claimed relationship. He concluded that there was a form of private life between the Appellant and EC but no genuine parental relationship as claimed.

12. Turning his attention back to the Appellant's relationship with his partner, the FTTJ found at [29] that,

> "I have found that they have all been cohabiting since November 2020. I am not satisfied that it has been in a relationship akin to marriage the whole of that period. There is insufficient evidence to show the true nature of the relationship beginning, although I am satisfied they may be regarded as genuine partners now."

13. He then considered this finding of fact in the light of the Partner definition under Gen 1.2, and concluded that for the purposes of the rules, the Partner definition was not met [30].

14. The FTTJ found that EX.1 of Appendix FM could not apply because it required both Ms Udrea to be a partner within the rubric of Gen 1.2 and the Appellant to have a genuine parental relationship with EC [30].

15. Upon finding that the requirements of Appendix FM were not met, the FTTJ considered whether there were "unjustifiably harsh consequences" under Gen 3.2, such that removal of the Appellant would be a disproportionate breach of Article 8. The FTIJ listed the Razgar questions at [32] and then undertook a proportionality assessment through the lens of s117B of the Nationality, Immigration and Asylum Act 2002 at [33-36]. He concluded that the public interest in "effective immigration control [.....] substantially outweigh[ed] the private interests of the Appellant, Ms Udrea and EC as regards to issues of family life". Finally, Judge Eldride considered the Appellant's private life and found there were no "very significant obstacles to integration" under the immigration rules and that the Appellant's removal was proportionate [37].

PERMISSION TO APPEAL

16. The Appellant applied for permission to appeal, and in a decision dated 8 April 2024, First-Tier Tribunal Judge Gumsley refused permission. The Appellant renewed his application for permission to appeal to the Upper Tribunal in reliance upon two grounds of appeal. In a decision dated 25 September 2024, Upper Tribunal Judge Lodato granted permission without restriction. In so doing, Judge Lodato found,

> "I consider there to be arguable substance to the submission that [29] does not give clear reasons for the conclusion that the couple were not residing together in a relationship akin to marriage despite accepting that they had lived together for over two years. It is arguably unclear what was meant by the observation that "they may not have been together in a relationship akin to marriage for the whole of that period"".

17. The salient parts of the Appellant's first ground of appeal argue that:

> "The Appellant's case is that since he started cohabiting with the Appellant (and with her daughter) since November 2020 so by the date of his application which was 13 January 2023, he meets the definition of a partner and that this is a genuine and subsisting relationship. It is submitted that the requirements of 2-year cohabitation prior to the date of

application to meet the definition of a partner under Appendix FM is different from a relationship that is genuine and subsisting. These are two different matters [….]"

"[…] the learned FtT Judge seems to have made a decision on the issue of 2-year cohabitation (see paragraph 25) but did not make a clear decision the other issue of genuine & subsisting relationship between the Appellant and his sponsor. Please see paragraphs 26 […] and 29"

"[…] the Appellant is entitled to know whether or not the Tribunal has accepted the relationship as genuine and subsisting."

18. The Appellant's second ground of appeal argues,

"It is submitted that in reaching a decision under Gen 3.2 the learned Judge did not take into consideration all of the relevant evidence that was before the Tribunal. The Tribunal heard the oral evidence from the Sponsor about her financial standing i.e., she works full time and that there was supporting evidence in the Appellant's bundle in the form of the Sponsor's bank statements which reflects receipt of salary from WGC Ltd (the salary slips and other relevant employment documents were supplied in the supplementary bundle which the learned Judge did not admit into evidence), but the learned Judge did not 29 address it in his determination in paragraph 34 where he considered section 117B. This was an important consideration for the purposes of making a balanced judgment under EX.1 as well as Gen 3.2. of Appendix FM. It is submitted that this is a material error of law."

19. There was no rule 24 reply from the Respondent.

20. The matter now comes before us to determine whether there is an error of law in the Decision of Judge Eldrige pursuant to s.12(1) of the Tribunal Courts and Enforcement Act 2007. If we find an error, we must then determine whether the error is material, such that the Decision should be set aside. If the decision is set aside, we must decide whether to remake the decision in the Upper Tribunal or remit the appeal to the First-Tier Tribunal, pursuant to s.12(2) of the 2007 Act.

21. We had before us a stitched bundle comprising of 583 pages, which the representatives confirmed that they had read.

22. Having heard submissions from Mr Iqbal and Ms Nwachuku, we indicated that we would reserve our decision and provide that in

writing with our reasons. We now set our reasoning and decision as follows.

DISCUSSION

Ground 1

23. Notwithstanding that the grant of permission to appeal suggests that the grounds argue that the FTIJ failed to give clear reasons for the conclusion that the couple were not residing together in a relationship akin to marriage, we find that the grounds make no such point. The salient point taken under ground 1 is that,

> "It is submitted that the requirements of 2-year cohabitation prior to the date of application to meet the definition of a partner under Appendix FM is different from a relationship that is genuine and subsisting [….] The judge seems to have made a decision on the issue of 2 years cohabitation (see paragraph 25) but did not make a clear decision the other issue [sic] of genuine and subsisting relationship […] see paragraph 26."

24. As we pointed out to Mr Iqbal at the error of law hearing, the grounds appear to us to be predicated upon a misunderstanding of the "Partner" definition under Gen 1.2. Gen 1.2 does not simply require two years cohabitation, the rule at the date of the RFRL on 22 February 2023 required,

> GEN.1.2. For the purposes of this Appendix "partner" means-
> […]
> (iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless a different meaning of partner applies elsewhere in this Appendix.

25. We find it abundantly clear that the rule requires a "relationship akin to marriage" for the entire two-year period of cohabitation before the date of application. The ground's suggestion that Gen 1.2 merely required two years' cohabitation is misconceived.

26. Insofar as what was meant by "akin to marriage" in Gen 1.2, in oral submissions Mr Iqbal agreed that the "akin to marriage" requirement under Gen 1.2 was analogous to the requirement of a "genuine and subsisting relationship" found under E-LTRP 1.7.

27. At [29] of the Decision, the FTTJ found,

> "I have found that they have all been cohabiting since November 2020. I am not satisfied that it has been in a relationship akin to marriage the whole of that period. There is insufficient evidence to show the true nature of the relationship beginning, although I am satisfied they may be regarded as genuine partners now".

28. We find that [29] is a complete answer to the test under Gen 1.2. The FTTJ accepts two years and two months cohabitation but was not satisfied that the entire two years' cohabitation were in a relationship akin to marriage, as required under the rules. He found that there was "insufficient evidence" of when the relationship began.

29. We further find that the last sentence of [29] is a clear finding that the relationship was "genuine" at the date of the First-Tier Tribunal hearing on 5 March 2024, notwithstanding the FTTJ's use of the word "may". We therefore reject the contention in the grounds that the FTTJ failed to make any findings on whether the relationship was genuine and subsisting. We are reinforced in this view by the fact that he clearly went on to consider family life in his proportionality assessment.

30. In oral submissions, Mr Iqbal valiantly endeavoured to widen the scope of his grounds to include an inadequate reasoning challenge to the finding at [29] that there was "insufficient evidence" to show when the relationship began. We do not accept that the grounds of appeal include a challenge against the "insufficient evidence" finding and we do not accept that permission was granted on that basis. Permission was granted on the basis that there were no "clear reasons" for finding that the two years of cohabitation was not akin to marriage. We find that "insufficient evidence" of when the relationship began to be akin to marriage is a clear reason, in circumstances where the Appellant bears the burden of proof on the balance of probabilities.

31. We therefore find that ground 1 discloses no material errors of law.

Ground 2

32. Ground 2 argues that the FTTJ failed to take into account relevant evidence. The relevant evidence, it is suggested, was oral evidence by the Sponsor confirming her financial standing and fulltime work, and documentary evidence confirming the Sponsor's employment. The documentary evidence which was not considered was a

"supplementary bundle which the Judge did not admit into evidence". The ground asserts that the Judge failed to have regard to this evidence at [34] when considering 117B and argues that this evidence was an "important consideration" for the purposes of EX.1 and Gen 3.2.

33. The first difficulty with this ground is its reliance upon a supplementary bundle that was not admitted into evidence. There is no suggestion in the grounds that the FTTJ erred in excluding the late bundle. We therefore reject the complaint that he erred by failing to take the late bundle into account.

34. The second difficulty with the ground is that it cannot be said that the FTTJ failed to take evidence of the Sponsor's employment into account, because he clearly found that the Sponsor was working at [36] when considering proportionality.

35. In terms of the suggestion that the FTTJ failed to have regard to the Sponsor's work at [34], we find the complaint misconceived. Paragraph 34 states,

> I find it more likely than not that he has some useful English. He may well be able to work. Having said that, neither Ms Udrea nor her daughter are qualified within the terms of section 117B. The child is not a British citizen and she has not lived here for a continuous period of seven years or more and Ms Udrea is neither a British citizen nor someone who has settled status here. Even if she had, subsection (4) states that I should give little weight to any relationship formed whilst the Appellant was here unlawfully, as he has been throughout. As regards subsection (6) I have not been satisfied that the Appellant has a subsisting parental relationship with the young child and that provision has no application.

36. We find that the FTTJ does not suggest at [34], or indeed anywhere else, that the Appellant is not financially independent for the purposes of 117B (3). As confirmed in Ruppiah v SSHD [2018] UKSC 58 at [55], "financial independence in section 117B(3) means an absence of financial dependence upon the state." The FTTJ makes no finding that the Appellant is financially dependent on the state. Even if the FTTJ had expressly taken the partner's employment into account under 117B(3), it would not have made any difference. Financial independence could only have operated as a neutral factor in the proportionality assessment, whether it was based on the Appellant's employability or his partner's current employment, or both. We find that the FTTJ did take it as a neutral factor.

37. The third difficulty with the ground is that we have found Judge Eldridge's finding, that Ms Udrea does not meet Gen 1.2, is a sustainable one and there has been no challenge to the finding that the Appellant does not enjoy a subsisting parental relationship with EC. The effect of this is that EX.1 cannot assist the Appellant for the same reasons given by Judge Eldridge, i.e. EX.1(b) required Ms Udrea to meet Gen 1.2 and EX.1(a) required the Appellant to have a genuine parental relationship with EC.

38. In terms of the suggestion that the Sponsor's employment was relevant to Gen 3.2 and the test of unjustifiably harsh consequences, as we have found above, Judge Eldrige clearly took the Sponsor's employment into account in his proportionality assessment at [36].

39. For these reasons we find that ground 2 discloses no material errors of law.

CONCLUSION

40. For our reasons above, we find that Judge Eldrige's Decision discloses no material errors of law.

NOTICE OF DECISION

No legal error material to the decision of the Judge Eldridge is made out. The determination shall stand.

D. Clarke
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
9th December 2024