



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/00791/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28 August 2020**

**Decision & Reasons Promulgated
On 5 March 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BIBI SAMINNEARA HOSANNY
(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr G Mavrantonis, Counsel instructed by ULA Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State to refuse her leave to remain as the dependant of an EEA national and dismissing the appeal on human rights grounds.
2. The Secretary of State’s grounds make two points. The first is misconceived. It was identified as such in the Rule 24 notice served by the claimant’s solicitors and the point abandoned promptly by the Secretary of State.

3. The second is that it is said the First-tier Tribunal gave inadequate reasons for its decision.
4. Having reflected on this and taken care to consider Mr Mavrantonis' submissions I have concluded that the Secretary of State is right.
5. The claimant is a national of Mauritius. She married her current partner, who is a British citizen of Kurdish Iraqi origin, at an Islamic ceremony on 18 June 2018. It is clear that that marriage, which has no status in English law, is the alleged start of their cohabitation and, assuming that is right, clearly the cohabitation was not long enough to establish a durable partnership for the purposes of Appendix FM.
6. The judge had some regard to the Immigration Rules but little or none to the statutory obligation to consider paragraph 117A of the Nationality, Immigration and Asylum Act 2002.
7. The particular difficulty that the claimant faces is that, by reason of Section 117B(4)(b), when an Article 8 balancing exercise is conducted little weight should be given to a relationship with a qualifying partner established by a person in the United Kingdom unlawfully and it would appear that the claimant is such a person although it may be interesting to establish exactly when the relationship began and what is meant by "a relationship formed".
8. It is right to note that the First-tier Tribunal Judge accepted evidence that the claimant's apparent partner has long term mental health issues. It is conceivable that the appeal might succeed on human rights grounds outside the Rules if not within them and the claimant is at least entitled to a proper decision. The decision before me does not show proper regard for the Rules or the statute. It does not show the detailed balancing exercise required of the features identified in the Rules and in the statute.
9. I take Mr Mavrantonis' point that *reference* is not necessary but *consideration* is and things here have not been considered that need to be. It seems to me that there is basic fact-finding that is needed as well as a carefully conducted balancing exercise in accordance with the Rules and it is in the claimant's interests that the matter is done properly in the First-tier Tribunal.
10. This is what Mr Melvin asked me to do and on this occasion, I find his submissions entirely sound.

Notice of Decision

11. The First-tier Tribunal erred in law. I set aside its decision and direct that the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 5 March 2021

