



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

Appeal Number: UI-2022-000737
[IA/02164/2021]

THE IMMIGRATION ACTS

**Heard at Field House
On 12 September 2022**

**Decision & Reasons Promulgated
On 1 November 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

GERALDO MALI

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Legal Representative from Evolent Law
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Albania against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him a residence card to confirm that he was the extended family member of a European Economic Area national exercising treaty rights in the UK.
2. To understand this case it is necessary to set out with some care its history and chronology. The application was made on 22 December 2020 and was an application, as indicated above, for a residence card. The application was refused and the reasons given in a letter dated 17

February 2021. The application was considered under Regulation 8(5) of the Immigration (European Economic Area) Regulations 2016, as amended. The Secretary of State found that the evidence did not satisfy her that the appellant was the partner of an EEA national and that they enjoyed a durable relationship.

3. Regulation 8 is headed "Extended Family Member". The refusal letter indicated the kind of evidence the Secretary of State would expect to find to support the contention that there was a durable relationship and this included "a long-term period in a relationship similar to marriage".
4. As indicated above, it was the appellant's case that they had lived together since 18 October 2020 (as indicated above). The application was supported with some domestic bills in joint names including a council tax demand dated 23 October 2020 and an Anglian water bill in joint names dated 1 December 2020 and the application was refused on 17 February 2022. The Secretary of State did not accept that two months' cohabitation was sufficient to establish a durable relationship. The Secretary of State indicated that a period of at least two years was ordinarily required. The Secretary of State also noted that the council tax demand contained the names of the appellant and his purported partner and two other people indicating that they were "housemates" rather than a "durable relationship".
5. The Secretary of State made plain that as the failure to establish a durable relationship extinguished any possibility of the appellant satisfying the Rules as an extended family member, no further findings were made.
6. There was the skeleton argument prepared for the First-tier Tribunal hearing. The appellant identified the issue as: "Whether the appellant's relationship with the EEA national sponsor was durable at the date of application?".
7. The supporting evidence was outlined.
8. It was said the appellant submitted documentary evidence demonstrating that he was living with the purported partner and that on 20 November 2020 the appellant and sponsor gave notice of intention to register their marriage. The Secretary of State confirmed in an email on 4 December 2020 that the appellant was free to register his marriage and, according to the skeleton argument, would have been able to register his marriage by 31 December 2020 had there not been a suspension of marriage registration due to the COVID-19 pandemic lockdown. The marriage was registered on 28 May 2021.
9. The appellant and his partner had also produced evidence including witness statements demonstrating their devotion to each other.
10. The respondent produced a review for the hearing which identified the issue as:

"Has the appellant discharged the burden of proving he was in a durable relationship with an EEA national?"

11. The respondent's review pointed out that the appellant claimed to have met his partner in August 2020 and to have started cohabiting on 18 October 2020. Given the shortness of the relationship and the lack of detail in the witness statement it was contended that the evidence did not support the conclusion the appellant urged. In particular the respondent contended that the appellant and sponsor lived in multioccupancy home with others and evidence such as household bills were not good evidence of a durable relationship.
12. Paragraph 8 of the review is important. It states:

"The marriage, on 28/05/2021 with the Sponsor, after the UK's withdrawal from the EU, is not consider a trump card proving the durability of the relationship at the date of the UK's withdrawal from the EU."
13. The appeal was determined by the First-tier Tribunal after hearing on 8 December 2021. I consider now the First-tier Tribunal's "Decision and Reasons".
14. Given that the United Kingdom is no longer a member of the European Union, there is a slightly troubling direction in paragraph 2 that "The relevant date for the consideration of the facts is the date of the hearing" but this is not the subject of criticism in the appellant's grounds. The judge noted that it was the respondent's case that

"the issues were whether the parties were in a durable relationship and whether the Sponsor is exercising treaty rights".
15. It was the appellant's case that the relationship:

"could properly be assessed as being durable even though at the date of the application it was only of 4 months duration."
16. The appellant relied on photographs of the marriage ceremony, witness statements and supporting material.
17. At paragraph 16 of the Decision and Reasons the judge found the time between the appellant and his purported partner first meeting and moving in and then making an application was "remarkably quick". The judge also directed himself that:

"For a relationship to be durable sensibly there would need to be something suggesting that it was of some strength and able to withstand the ups and downs of life."
18. The judge also found inconsistencies in the evidence on "central details such as who lived with and the identity of who attended the wedding". The judge found that the witnesses actually fundamentally undermined the appellant's case because of the difficulties in the evidence. The judge noted it was the appellant's case that the couple had subsequently married.
19. Given that the phrase "Durable relationship of convenience" is defined in the regulations, Paragraph 19 of the Decision and Reasons, taken in isolation, is a little troublesome because the judge says:

"In submissions Mr Ahmed pointed to the fact of their having married and considered the nature of a durable relationship of convenience. That term is

meaningless in reality either there is a durable relationship or there is not, if not the application is made on a false premise.”

20. The judge then went on to find that he was not persuaded that there was a durable relationship and found that there was not a genuine relationship described as durable or marriage.
21. The judge dismissed the appeal.
22. There is one substantial ground of appeal to the Upper Tribunal. It concentrates particularly on paragraph 19 of the Decision and Reasons and the judge’s reference to the term “durable relationship of convenience” being meaningless. This is said to be an error because the term “durable partnership of convenience” is not meaningless but is defined in the Immigration (European Economic Area) Regulations 2016. The grounds then indicate what a durable partnership does not include, particularly a durable partnership of convenience and what a “durable partnership of convenience” does include. At paragraph 6 of the grounds it is said:

“The IJ essentially concluded at Paragraph symbol §19 that the appellant was in a ‘durable partnership of convenience’ without saying as much. Instead, the IJ used the words “the relationship is not genuine”.
23. Permission to appeal was granted by the Upper Tribunal. The grant of permission might be thought to flatter the grounds. Permission was given because, at the date of the hearing, the appellant and sponsor were married and it was said to be arguable that the First-tier Tribunal Judge “needed to – but did not – consider whether it was a marriage of convenience.”
24. It was also said to be arguable that the judge failed to consider whether, prior to the marriage, the appellant and sponsor were in a durable partnership of convenience. The judge did not refer to the definitions of the Rules and again, according to the grant failed to apply the test clarified in “*Saeed (Deception – knowledge – marriage of convenience) [2022] UKUT 00018.*”
25. There was a Rule 24 notice signed by a Senior Presenting Officer. The important part is at paragraph 2 where it is said:

“2. The respondent will submit *inter alia* that the Judge of the First-tier Tribunal directed himself appropriately ... It was for the appellant to establish that they were in a durable relationship and the judge concluded, for perfectly sound reasons, that they had not done so.”
26. Before me Mr Ahmed relied heavily on the grounds. He emphasised that it was the appellant’s case that once the marriage was established, it was for the Secretary of State to show that it was not one of convenience and that approach is simply not reflected in the First-tier Tribunal Judge’s approach.
27. I have considered this.
28. I already indicated that I find there is a worrying flaw in the Decision and Reasons that the representatives have not addressed. The judge directed

himself that the relevant date for his consideration was the of the date of decision by the Tribunal and at that time the appellant and his alleged former durable partner were married. I remind myself of the decision of this Tribunal in **Geci (EEA Regs: transitional provisions; appeal rights) [2021] UKUT 00285 (IAC)**. This concludes that the Immigration (European Economic Area) Regulations 2016 were revoked in their entirety on 31 December 2020. There were transitional provisions that, for example, continued existing appeals but, as Judge Rintoul explained in paragraph 3 of the judicial headnote:

“The effect of the amendments is that the sole ground of appeal is now, in effect, whether the decision under appeal breaches the appellant’s rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020.”

29. The parties to this marriage were not married then. Any clouding of the issues consequent on the marriage were irrelevant.
30. I disagree with the contention in the grounds that the judge found that there was a durable partnership of convenience. He did not; he found there was not a durable partnership at all. That much was abundantly clear. It was in this context that the judge made the remarks that he did about paragraph 19. It is not that the judge was unaware of the definition of durable partnership of convenience. His point was there was not a durable partnership. The case was based on there being a durable partnership. The fact of the marriage is of some evidential value because it might illuminate the intentions of the parties at the material time, but none of these things undermine the essential soundness of the judge’s decisions that this was an extremely short relationship and there was very little evidence from any source to give substance to the claim that it was a durable relationship in law. That was the case the appellant raised, that is what he failed to prove and that is why the First-tier Tribunal dismissed the appeal. I cannot agree that this is in any way undermined by a subsequent finding that the marriage that followed the event changes that finding in any way.
31. It may be, if it had been the respondent’s case that there was a marriage of convenience, or even a durable relationship of convenience, the judge would have gone about his task in a different way and expressed himself less loosely on matters that would have then been important. That is not what has happened here. The judge’s reasons are clear and lead to a wholly sustainable finding on the issues that was required to decide.
32. I dismiss the appeal against the First-tier Tribunal’s decision.

Notice of Decision.

33. The appeal is dismissed.

Jonathan Perkins

Signed

Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 September 2022