IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-003732
UI-2022-003734
UI-2022-003736
First-tier Tribunal Nos:
EA/01360/2022
EA/01361/2022
EA/01756/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 May 20223

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

ANILA KURATI (1)
AUREL GERDUQI (2)
ERISA GERDUQI (3)

Respondent

Representation:
For the Appellant: Ms S Rushforth, Senior Home Office Presenting Officer
For the Respondent: Mr Slatter, Counsel, instructed by My UKVisas

Cardiff Civil Justice Centre on 2 February 2023

DECISION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State, for convenience we shall refer to the parties as they appeared before the First-Tier Tribunal.

2. The Secretary of State appeals, with permission, against a decision of the First-Tier Tribunal (Judge Maka) which allowed the appellants' appeals against the respondent's decision dated 12 January 2022 to refuse their applications for a family permit under the EUSS Family Permit scheme in Appendix EU FP of the Immigration Rules.

The Judge's Decision

3. The principal appellant is Ms Anila Kurati. She is an Albanian national, the second and third appellants are her two minor children with a previous partner in 2006 and 2008. The appellant was introduced to the sponsor through a work mate in Albania who is his cousin. The couple spoke together over Facebook. They decided to get married in December 2020 but in the event were unable to do so as flights were cancelled because of COVID. In the event, they married on 31 May 2021 in Albania. Subsequently the appellant applied with her two children to join the sponsor in the UK.

4. Although the judge found that the appellant did not meet the definition of a durable partner within Appendix EU(FP) to the Immigration Rules in respect of the requirement that she and her sponsor live together for at least two years in a relationship akin to marriage, the judge found that there was other significant evidence to demonstrate that the appellant was in a durable relationship with her partner and allowed the appeal.

The Appeal

5. Ms Rushforth on behalf of the respondent contends that the judge's decision is irrational and constitutes an error of law, given that the appellant and sponsor's relationship had existed for a maximum of three months and they had never met in person, let alone lived together, at any time prior to the specified date of 31 December 2020.

6. At the hearing before us, it was a matter of agreement that the judge had self-directed correctly as to the relevant date, and that any incorrect references to the applicable EU provisions are immaterial, as the relevant requirement for a durable relationship is consistent across the various provisions so that nothing flowed from the self-evident mistakes in that regard. We are in no doubt that, had the respondent chosen to field a presenting officer on the day, the additional assistance would have assisted in this regard.

Discussion

7. The requirements of paragraph (a)(i)(bb) of Annex 1 of Appendix EU (Family Permit) include the following requirement:

> "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".

8. The appellant is also required to meet the definition of 'durable partner' contained within Annex 1 of Appendix EU (Family Permit) which requires the following:

> "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)".

9. Whilst accepting, as set out in the grounds, that a subsequent marriage may be treated as providing an indication that a relationship which preceded it had been durable at a certain point, Ms Rushforth's point is that, on the facts here, there simply was no evidence capable of amounting to any "other significant evidence" of a 'durable relationship' prior to the specified date of 31 December 2020, being the end of the transitional period, given that they had never physically met prior to that date and had only been acquainted for the 3 months prior on a long-distance basis. As a consequence, the judge erred in law in allowing the appeal. The only lawful outcome of the appeal was that it should have been dismissed.

10. We do not accept Ms Rushforth's submissions. We note, as the grounds point out, that at [19] of the determination the FTTJ states: "I accept the appellant's relationship commenced in September 2020 and the parties had not physically met each other in person before the specified date of 31 December 2020." Clearly, the judge was well aware of the long-distance nature of the relationship, the fact that they had not physically met, and the relevance of the date.

11. There is no definition of "durable" contained in the Immigration Rules. Although the rules provide that the position is met by evidence of two years' cohabitation in a "relationship akin to marriage", there is no requirement for cohabitation nor is there a requirement that a couple must have physically met. It is a matter for individual assessment for the judge hearing the evidence.

12. In this case, the judge had the benefit of hearing from the appellant and also from a different daughter of the appellant, who is residing here. In summary, the judge took into account the evidence that, prior to the specified date, the couple had been introduced to each other remotely via a family member of the sponsor who worked with the appellant in a fish factory, they had enjoyed daily and frequent remote video and messaging contact and had decided that they would marry. The evidence of the sponsor of a settled intention to marry prior to the specified date was additionally supported by the documentary evidence of the couple having given formal notice of intention to marry to the Albanian authorities and of the sponsor having booked a flight to enable the marriage to occur in mid-December. In the event, travel restrictions to Albania operated to prevent such travel. The judge was entitled to find that, had it not been for COVID 19, they would have married before the specified date. The evidence was uncontested, as the respondent did not field a presenting officer. The judge found the evidence sufficient to establish on balance that they were in a durable relationship before 31 December 2020.

13. We remind ourselves that the test is not what we would have made of the evidence. We consider that the evidence falls within the range of evidence which can reasonably be seen as capable of being considered "other significant evidence" of a durable relationship, so we do not conclude that it is not a proper basis upon which the judge could reach such a conclusion. Not least, whirlwind romances which result in lasting and committed relationships are not implausible per se; the evidence showed the couple were from the same

cultural and linguistic background; and the period in question from September to December 2020 were exceptional times where remote was “the new normal”.

14. For the above reasons, the First-tier Tribunal’s decision to allow the appellant’s appeal did not involve any material error of law and stands.

Elisabeth Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 February 2023