



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2021-001410

First-tier Tribunal No: EA/03644/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**  
**DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**SARA KESHVARI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr D Makovicky, Sponsor  
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 10 July 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Iran born on 28 June 1995. Her appeal against the refusal of an EEA family permit as an extended family member under the Immigration (EEA) Regulations 2016 ('the EEA Regulations 2016') was dismissed by First-tier Tribunal Judge Mills in a decision dated 19 November 2021. This decision was set aside by the Upper Tribunal on 14 November 2022 and the appeal was adjourned for remaking before the Upper Tribunal.
2. On 28 January 2021, the appellant applied for an EEA family permit as the durable partner of Daniel Makovicky, a citizen of Slovakia, ('the sponsor') who lives in the UK. The appellant is living in Turkey. The respondent refused the

application on the basis that there was insufficient evidence that the appellant and sponsor were in a durable relationship.

**The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020**

3. The application was made after 31 December 2020, implementation period completion day ('IP completion day'). The EEA Regulations 2016 do not apply unless the appellant can satisfy Regulation 3 of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('EU Exit Regulations 2020') which states:

"(2) The provisions of the EEA Regulations 2016 specified in Regulations 5 to 10 continue to have effect (despite the revocation of those Regulations) with the modifications specified in those Regulations in relation to a relevant person during the grace period.

...

"'family member'—

(a) has the same meaning as in paragraph (1) of Regulation 7 of the EEA Regulations 2016 (read with paragraph (2) of that Regulation) as those Regulations had effect immediately before IP completion day, and

(b) includes an extended family member within the meaning of Regulation 8 of those

Regulations as they had effect immediately before IP completion day if that person—

(i) immediately before IP completion day satisfied the condition in Regulation 8(5) of those Regulations (durable partner), or

(ii) holds a valid EEA document (regardless of whether that document was issued

before or after IP completion day);

"'relevant person' means a person who does not have (and who has not, during the grace period, had) leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules and who—

(a) immediately before IP completion day—

(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(ii) had a right of permanent residence in the United Kingdom under those Regulations (see Regulation 15), or

(b) is not a person who falls within sub-paragraph (a) but is a relevant family member of a person who immediately before IP completion day—

(i) did not have leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules, and

- (ii) either—
  - (aa) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or
  - (bb) had a right of permanent residence in the United Kingdom under those Regulations (see Regulation 15).

4. There issues in this appeal are as follows:

- (i) Whether the appellant is a relevant person and the grace period applies under Regulation 3 of the EU Exit Regulations 2020;
- (ii) If so, whether the appellant and sponsor were in a durable relationship immediately before 31 December 2020.

5. The appellant was not legally represented. We first heard evidence from the sponsor as to the nature of the relationship. We then heard submissions from the respondent on the two issues in the appeal. The sponsor was given an opportunity to respond to the respondent's submissions. We have considered the sponsor's oral evidence and submissions in the context of all the documentary evidence submitted.

### **Sponsor's evidence**

6. The sponsor stated he had lived in the UK for 17 years since 2006. He met the appellant on a dating platform and communicated with her by WhatsApp messages and calls. His relationship with the appellant started in August 2020 when he visited her in Turkey. Since August 2020, the sponsor had visited the appellant in October 2020, December 2020, April 2021 and September 2021. He continued to visit the appellant every 2 to 3 months for 7 to 14 days save when there were Covid restrictions imposed. His last visit was on 7 July 2023 when they met in Prague. He could not visit as much as he wanted but he was in touch with the appellant on a daily basis.

7. The purpose of the application for an EEA family permit was to allow the appellant to visit the sponsor in the UK to carry on the relationship by multiple visits. It was to allow the appellant to come to the UK on a regular basis, travelling when it was possible. He had asked the Home Office to allow the appellant to visit the UK to attend the appeal hearing but he had received no response.

8. In response to a question from the panel about the status of the relationship at the date of hearing, the appellant stated that at this stage they would live together. In December 2020, the relationship was in its early stages and he was thinking about taking it further by visiting as much as possible. Given the sponsor's past history he wanted to make sure the relationship was durable and long term. After 6 months the sponsor felt that the relationship could not be maintained by holiday visits to Turkey when he had to take time off work. Regular visits were necessary to maintaining the relationship. The appellant and sponsor would then consider something more permanent or long term.

9. In response to questions from the respondent, the sponsor stated that he had made comments on the application form and the appellant had submitted it. He confirmed that the application form accurately reflected the position at the time in that the sponsor and appellant wanted to explore the relationship. It was not an application for the appellant to settle in the UK. The visits by the sponsor lasted between 7 to 14 days and could not be longer due to work and financial restraints.

### **Submissions**

10. The respondent submitted that if the grace period applied, the appellant had to show the relationship was durable under Regulation 8(5) of the EEA Regulations 2016. She submitted the appellant had failed to do so because at the time of the application the appellant and sponsor were still getting to know each other and had no plans to live together permanently. The purpose of the application was for the appellant to visit the UK and move the relationship forward. At the date of the application the relationship was not durable under the EEA Regulations 2016.
11. The respondent submitted the EEA Regulations 2016 were revoked on 31 December 2020. The grace period allowed family members to make an application before 30 June 2021 as long as the definition in Regulation 3 was met. The sponsor had today provided a letter showing that he was granted leave to remain under the residence scheme immigration rules on 20 April 2020 and therefore he could not meet the definition of a relevant person and the grace period did not apply. The EEA Regulations 2016 did not apply and there was no right of appeal.
12. The sponsor considered Regulation 3 and asked for time to respond and make further submissions. He stated that he married the appellant on 7 May 2023 and had made applications to the CJEU and European Court of Human Rights. The panel explained that, applying the EU Exit Regulations 2020, the appellant could not benefit from the grace period and the appeal had to be dismissed.

### **Conclusions and reasons**

13. The EU Exit Regulations 2020 provide a grace period for applications made after 31 December 2020 and before the 30 June 2021 if the EEA national and the family member meet certain requirements. The EEA national must not have leave to remain under the residence scheme immigration rules and the family member needs to establish that immediately before 31 December 2020 they were in a durable relationship under Regulation 8(5) of the EEA Regulations 2016.
14. The sponsor was granted leave to remain under the residence scheme immigration rules on 20 April 2020. Therefore, the appellant is not a 'relevant person' under Regulation 3 and she cannot benefit from the grace period. The application was made after the EEA Regulations 2016 were revoked and therefore there is no basis upon which the respondent can issue an EEA family permit.
15. Further and alternatively, on the appellant's and sponsor's own evidence, the relationship was not durable at the date the UK left the EU on 31 December 2020. The sponsor stated at that time there were no plans to live together permanently

and he wanted the appellant to visit the UK to develop the relationship. This was consistent with the information in the application form in which the appellant stated:

“I would like to live with my partner. However, due to the pandemic, we didn't have a chance as both of us have to work hard to get ahead in our careers. Currently, we wouldn't make a plan for living together because the most important thing for us is to keep our relationship moving forward and I would be able to travel to the UK. In this case, we both can visit each other easier and he does not have to always travel to Turkey.”

16. Accordingly, the EEA Regulations 2016 do not apply and the appeal is dismissed for want of jurisdiction. Alternatively, the appellant has failed to show she was in a durable relationship immediately before 31 December 2020 and Regulation 8(5) does not apply. The appeal is dismissed under the 2016 EEA Regulations.

### **Notice of Decision**

**The appeal is dismissed**

**J Frances**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 July 2023**