IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005466

First-tier Tribunal No:
EA/12376/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th December 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

ENTRY CLEARANCE OFFICER

Appellant

and

ALI RAHEEM MUTASHAR ALSAIDHASAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Presenting Officer
For the Respondent: Ms E Lanlehin of Counsel, instructed by Direct Access

Heard at Field House on 16 November 2023

EXTEMPORE DECISION AND REASONS

Introduction

1. We shall refer to the parties as they were before the First-tier Tribunal. Therefore, the Entry Clearance Officer is once again "the Respondent" and Mr Alsaidhasan is "the Appellant".

2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Farrelly, promulgated on 30 August 2022, following a

hearing on 2 March of that year. By that decision, the judge allowed the Appellant's appeal against the Respondent's refusal of his EUSS family permit application. The basis of the Appellant's application was that he was in a genuine and subsisting relationship with, and was married to, Ms Joemaane Alsaidi, a Dutch national. The Appellant, a citizen of Iraq, established the relationship over the course of time although they had not, at the material time, undertaken a civil marriage. The EUSS application was refused by the Respondent on the basis that insufficient evidence had been provided to establish the relationship itself.

3. The appeal to the judge was brought under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.

4. In a brief decision, the judge concluded that the evidence provided by the Appellant and Ms Alsaidi was reliable. He was of the view that a religious ceremony of marriage conducted in Iraq may well have been sufficient to have complied with Iraqi law and thus being recognised in this country. However, at paragraph 13 he reached an alternative finding that even if he were wrong about that, the relationship was durable. On this basis, he allowed the appeal. Whilst not expressly stating that the appeal was allowed with reference to the relevant Immigration Rules under Appendix EU(FP), in our view that is clearly what he intended, given the nature of the application and what he said at paragraph 2 of his decision.

5. The Respondent's grounds of appeal were, with respect, vague in nature. They focused exclusively on the Withdrawal Agreement and the assertion that the judge had, in some way, either misapplied it or applied it when he should not have done so.

6. The grant of permission made by the First-tier Tribunal on 7 November 2022, observed that it was arguable that the judge had erred in failing to properly consider the Withdrawal Agreement.

7. At the hearing before us, Mr Melvin, in our view quite properly, accepted that the grounds were somewhat vague in nature, that it may be that the Withdrawal Agreement had not been applicable to the family permit

scenario and he acknowledged that there had been no application to amend the grounds of appeal.

8. We conclude that the judge did not materially err in law. Exercising appropriate restraint before interfering with a decision of the First-tier Tribunal, we note that an appeal to the Upper Tribunal should be based on clear grounds of appeal which identify errors said to be material to the outcome. A hearing before the First-tier Tribunal is not a dress rehearsal. We also note the importance of procedural rigour: see for example Talpada [2018] EWCA Civ 841, at paragraphs 68 and 69, and the importance of identifying the relevant issues, as confirmed by the Presidential Panel in the recent decision of Lata (FtT: principal controversial issues) India [2023] 163 (IAC).

9. We are satisfied that it was open to the judge to find as a fact that the Appellant's relationship with Ms Alsaidi was genuine and had become durable. Whether or not the judge was right in relation to his view of Iraqi law, he reached an alternative finding at paragraph 13. That finding has not been challenged in the grounds of appeal, or indeed before us by way of an amendment to the grounds.

10. The grounds of appeal, as drafted, are in our view misconceived. They focus on an issue, namely the Withdrawal Agreement, which was not applicable in this case. They make no reference to Annex 1 to Appendix EU (FP) or any relevant definitions. With respect to the grant of permission, that too was misconceived in its focus on the Withdrawal Agreement.

11. To restate, then, that there has been no application to amend the grounds of appeal. On the case put forward by the Respondent to the Upper Tribunal, there has been no identification of an error of law. On that basis, we are not entitled to interfere with the judge's decision and do not do so.

12. The Respondent's appeal to the Upper Tribunal is accordingly dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and that decision shall stand.

The appeal to the Upper Tribunal is dismissed.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 November 2023