



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

Case No: UI-2022-005731

FtT No: EA/04191/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 7 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MOHAMMED AL DULAIMI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Unrepresented

**Heard at Field House on 2 August 2023**

**DECISION AND REASONS**

**Introduction**

1. For the sake of continuity I shall refer to the parties as they were before the First-tier Tribunal. Therefore, the Secretary of State is once more “the Respondent” and Mr Al Dulaimi is “the Appellant”.
2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Chamberlain (“the Judge”), promulgated on 5 October

2022 following a hearing conducted on 13 September 2022. By that decision, the Judge allowed the Appellant's appeal against the Respondent's refusal of his application under the EU Settlement Scheme ("EUSS") as set out in Appendix EU to the Immigration Rules.

3. The Appellant is a citizen of the Netherlands and his partner ("the Sponsor") is a French citizen. The basis of the application was that the Appellant was the durable partner of the Sponsor as at the specified date of 31 December 2020 and had remained as such subsequently. The Respondent did not accept this, concluding that there was no evidence of cohabitation, or that there was significant evidence of a durable relationship in the absence of cohabitation. The appeal to the First-tier Tribunal was brought under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.

### **The Judge's decision**

4. In a clearly written and concise decision, the Judge set out the essential background before stating her finding that both the Appellant and Sponsor had provided credible evidence. She noted that the Appellant's case was not predicated on cohabitation because the couple had in fact never lived together. The Judge correctly noted that a durable relationship could be demonstrated by other significant evidence as an alternative to cohabitation. She took account of the relevant cultural context (the Appellant and Sponsor both came from traditional Muslim families). There were other practical difficulties in the path of cohabitation. The Judge found that "a relationship can be both long distance and durable" (the Appellant had been residing in the Netherlands whilst the Sponsor had been in France). As the Judge observed, "[a relationship] can be fraught with difficulties caused by the distance, but it can still be durable".

5. The Judge then set out the history of the couple's relationship which had begun with introductions in the summer of 2018 and led to culturally appropriate communications and then the consideration of marriage. Subsequently, the Appellant began providing financial support to the Sponsor. In April 2019, the couple met in the Netherlands. A firm intention to marry was formed in 2020, but these were put on hold due to the Covid-19 pandemic.
6. In light of the foregoing, the Judge found that whilst there was no evidence of cohabitation there was significant other evidence of a durable relationship which existed as at 31 December 2020. The Judge also found that that relationship continued to date. Given that that was the sole issue before her, the Judge concluded that the definition of durable partner under Annex 1 to Appendix EU had been satisfied and that the appeal should accordingly be allowed under the 2020 Regulations.

### **The grounds of appeal**

7. The Respondent's grounds of appeal were narrowly drawn. It was stated in clear terms that the challenge was predicated upon alleged irrationality on the Judge's part. In light of the absence of evidence of cohabitation, it was said that the Judge acted irrationally in concluding that there was a durable relationship between the Appellant and the Sponsor. The Judge had, it was said, "conflated" the issue of whether the relationship was subsisting with whether it was durable.
8. Permission to appeal was refused by the First-tier Tribunal but subsequently granted by the Upper Tribunal.

### **The hearing**

9. The day before the hearing the Appellant's previous solicitors contacted the Tribunal to confirm that they had come off record due to a lack of contact with the Appellant. Neither the Appellant nor the Sponsor attended the hearing. Having undertaken checks, I was satisfied that the notice of hearing had in fact been sent to the Appellant as well as his previous representatives. There had been no communications to the Tribunal from the Appellant. In all the circumstances, I concluded that it was appropriate to proceed in the Appellant's absence, pursuant to rule 38 of the Upper Tribunal's Procedure Rules.
10. Mr Clarke quite fairly acknowledged the narrow scope of the grounds of appeal and the fact that cohabitation was not a requirement of the definition of durable partner under Annex 1. There was nothing in the Respondent's guidance which specifically defined the type of other evidence which might be sufficient to establish a durable relationship.
11. At the end of the hearing I announced my conclusion that there were no errors of law in the Judge's decision.

## **Conclusions**

12. The Judge produced a clear and unimpeachable decision in respect of the issue with which she was concerned. She correctly directed herself to the definition of durable partner and the fact that it did not require cohabitation. She specifically addressed the question of whether there was "significant other evidence" to support the existence of a durable relationship. She carefully considered the evidence before her, was plainly entitled to find that evidence credible, and her overall finding that the relationship had been as at 31 December 2020 and remained durable was very far from being irrational. She quite obviously did not conflate the question of whether the relationship was subsisting with whether it was durable.

13. There is no substance to the Respondent's challenge.

**Anonymity**

14. There is no basis for an anonymity direction in this case and I do not make one.

**Notice of Decision**

15. **The decision of the First-tier Tribunal did not involve the making of an error of law. That decision shall stand.**
16. **The appeal to the Upper Tribunal is accordingly dismissed.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 7 August 2023**