IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002019
First-tier Tribunal Nos: HU/56602/2022
IA/09472/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr Artemis Binaj
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Collins (Counsel)
For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 20 September 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Dilks, promulgated on 21st April 2023, following a hearing at Manchester on 17th April 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Albania, and was born on 19th July 1991. He appealed against the decision of the Respondent dated 15th September 2022, refusing his application for leave to remain in the UK under Appendix FM to the Immigration Rules on the basis of his family life with his partner, a Ms Edite Tavares-Gil, a Portuguese national.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has cohabited with the Sponsor for two years at the date of the application, and is in a genuine and subsisting parental relationship with two of his partner's children, who are under the age of 18, as they are qualifying children, such that it would be unreasonable to expect them to leave the UK under EX.1.(a) and Section 117B(6).

4. The Respondent's position on the other hand, as set out in the refusal letter of 15th September 2022, is that the Appellant had failed to provide sufficient evidence that he had cohabited with the Sponsor for two years prior to the date of the application. In the Respondent's review of 5th January 2023, it was further asserted that there was very little evidence within the Appellant's bundle of any joint responsibility for the running of the accommodation where the Appellant and the Sponsor reside, or of any detailed evidence suggesting that the Appellant and the Sponsor were in a genuine and subsisting relationship, which would be akin to marriage, since September 2020, when they are alleged to have started living together.

The Judge's Findings

5. The judge at the outset observed that the crucial issue before her was not just two years' cohabitation prior to the date of the application, but satisfaction on the evidence that the Appellant and the Sponsor had been living together in a relationship akin to marriage for at least two years prior to the application (paragraph 20). The application was dated 7th September 2022. However, the utility bills at the property where they were residing indicated that these were only in the Sponsor's name alone until 25th July 2022, where one sees their first bill in their joint names. (paragraph 22). The judge also had regard to the school consent form, which referred to the Appellant as a "stepdad" and gave his address as [10 ***** Drive], and being dated 23rd July 2022. Regard was had by the judge to other documentary evidence as well, such as the Halifax bank statements and the billing invoices with regard to the Appellant's partner's work, (paragraph 24). A typed letter from Carla Riberio, dated 15th January 2022, stated that she had known the Sponsor and the Appellant for three years, and had known them as a couple because they socialised as friends since that date (paragraph 25). Then there was oral evidence heard by the judge, from the Sponsor's eldest daughter, Carolina, who was by now an adult, and this stated that the Appellant moved in with the Sponsor in September 2020 (paragraph 29). There were also a number of photographs submitted in evidence which the judge had regard to but these were undated (paragraph 30).

6. In the end, the judge concluded that the Appellant and the Sponsor could not be said to be living together in a relationship akin to marriage for at least two years prior to the date of the application (paragraph 31). The oral evidence was not reliable, because both the Appellant and the Sponsor were inconsistent as to what date the Appellant went on the tenancy agreement, and the judge could not conclude that they had been living together two years

prior to 7th September 2022, when the application was made (paragraph 32). The Appellant also did not finally meet the requirements of EX.1.(b) as he did not come within the definition of a "partner". Although the Appellant's partner had indefinite leave to remain in the UK, there were no insurmountable obstacles to family life continuing outside the UK (paragraph 34).

Grounds of Application

7. The grounds of application state that the judge's finding that the Appellant was not in a relationship with the Sponsor akin to marriage was unsustainable on the evidence, and was indeed contradicted by a finding at paragraph 51. The judge's approach to the evidence of the parental relationship was also flawed because some material evidence was not considered and inadequate findings were made. Furthermore, the judge's approach to Section 117B(6) was confused. On 22nd May 2023, Judge Moon, in the First-tier Tribunal refused permission to appeal, but observed that, "overall the Judge found that the Appellant and Sponsor were in a genuine relationship but that the relationship had not been ongoing for as long as was claimed", and that "the Judge gave adequate reasons, finding the tenancy agreement to be unreliable because the complete document was not provided and the oral evidence in relation to the date was inconsistent" (paragraph 2). It was noted that the judge had highlighted the fact that all of the documents in relation to the children were dated shortly before the time of the application, and had there been a genuine and subsisting parental relationship, there would have been earlier documents (paragraph 4).

8. Permission to appeal was, however, granted by UTJ Norton-Taylor on 24th July 2023. He observed that the core issue in this case was whether the Appellant had been for some time and/or was at the date of the hearing, in a genuine and subsisting relationship with his claimed partner, and whether the Appellant had a genuine and subsisting parental relationship with a claimed partner's children (paragraph 2). However, given that the judge had not only found that the Appellant and the Sponsor had not been in a relationship for as long as they claimed, "but ultimately found that there was no genuine and subsisting relationship *at all* (with the consequent finding that there was no relationship between the Appellant and the children), it was arguable that the judge failed to make findings on certain evidence that was relevant" (paragraph 4).

9. A Rule 24 response from the Respondent dated 25th August 2023 reported to resist all the Grounds of Appeal on the grounds on the grounds that Judge Dilks was alive to the issues and considered them carefully. She applied the correct standard at paragraph 20 and reached the correct conclusions at paragraphs 25, 28, 39, 30 and 31. The judge also applied the same logic when it came to the children, namely, that the Appellant did not have a genuine and subsisting relationship as claimed.

Submissions

10. At the hearing before me on 20th September 2023, Mr Collins, appearing on behalf of the Appellant submitted that on any view, the Appellant was in a relationship with his partner, and her children, two of whom were still minors, and the third of whom had now reached the age of being over 18. This was a case where the judge below simply did not go far enough in considering all the evidence. Mr Collins made good his arguments as follows.

11. First, that as far as the issue of the couple living together was concerned, the eldest child, Carolina, had given evidence that the Appellant had moved in with them in September 2020,

and yet the judge makes no finding in relation to this evidence. But in any event, submitted Mr Collins, even if they had not been in a relationship for two years, the evidence from Carolina was that there was still a genuine and subsisting relationship between her mother and the Appellant. Had the judge considered that evidence, the issue would then have been whether the Secretary of State's decision was a reasonable one and this the judge did not consider, given that Carolina's evidence was not one on which the judge had made any findings.

12. Second, there was a letter from the school dated September 2022. This letter from Bridgewater School actually refers to the address where the Appellant lives and then goes on to say that, "This letter is to confirm that Artemis Binaj (partner of Edite Tavares-Gil of [10 ***** Drive] often picks up Luis Gil from school and occasionally drops him off". This letter is written by Mr Blackburn, who is the Executive Headteacher of Bridgewater Primary School. Mr Collins submitted that it was inconceivable for a school head to write such a letter if it was not true.

13. Third, there is the consent form dated 23rd July 2022 from the Salford City Council, which is signed off by the Appellant's partner, Edite Tavares-Gil, in relation to St Ambrose Barlow RC High School, describing the child's mother as being the first point of contact, and the Appellant as the second point of contact, given his relationship to the pupil, of being a "stepdad" (see page 69). Mr Collins submitted that this actually predates the application, and includes both the email of the Appellant's partner and her mobile telephone number, as well as the mobile telephone number of the Appellant himself, should any of them have to be contacted by the school in the event of an emergency.

14. Fourth, and finally, Mr Collins submitted that there were a range of photographs (see page 144), showing the Appellant, especially at the graduation ceremony of the one of the children, together with the child's mother, celebrating the event. This was followed by a photograph of the Appellant with his partner and children at a beach, on an away day. It had never been suggested that these photographs were a concoction. Yet, the judge had not assessed the evidence generally of the Appellant's role in the lives of his stepchildren, which was a significant omission given that the Appellant's partner works nights at Manchester Airport (see paragraph 14 at page 40) and needs the Appellant to be at home looking after the children.

15. Finally, the judge's conclusion that, "I consider that the dates of the documentary evidence to show cohabitation and of the Appellant playing a role in the children's lives is shortly prior to following the Appellant's application" (paragraph 51), was irrational if subsequently the judge had also concluded that there was no genuine, parental relationship between the Appellant and the children and no genuine and subsisting relationship with his partner.

16. For his part, Mr Bates relied upon the Rule 24 response. He submitted that if the contention here was that the Appellant had moved in with his partner in September 2020, there was still no evidence for the period from 2020 until 2021, and the first piece of evidence starts from July 2022 when there is a consent form by Salford Council in relation to a child at school. However, this is simply information that the school is given by the parties. It is not evidence of the parties being in a genuine and subsisting relationship. As for the letter from Bridgewater Primary School, written by the executive headmaster, this is so brief that the only conclusion that can be drawn from it is that it is based on information given by the Appellant and his partner to the school, which is then transcribed by the school. The fact is that the headmaster himself was not conducting a private investigation into what was being

asserted. There is no evidence that he knew of the Appellant on occasions picking up the child from school. As for the photographs, there was only one photograph from 2022 relating to the graduation of the child, and one would certainly have expected many more for this event, particularly given that all the other photographs are undated.

17. In short, if the relationship started in September 2020, it was difficult to understand why there was no documentary evidence until 2022. This was significant because simple cohabitation was not the same as being in a genuine and subsisting relationship. There may be many reasons why people live with one another, and not having proper documentary evidence to back up a relationship was a serious omission in the evidence, which is why the judge did not attach weight to the evidence. With respect to the statement by the judge at paragraph 51, there was no contradiction here because what the judge was stating was that the relationships between the Appellant and the wider family were not genuine relationships, even though at the date of application evidence was presented to this effect, given the complete absence of any earlier evidence. Taken in its entirety, the judge was simply explaining why she was rejecting all the evidence. Irrationality was a high threshold and the judge in this case had done enough to ensure that the decision was one which was sustainable.

18. In reply, Mr Collins submitted that the Appellant's appeal was not a mere disagreement with the findings of the judge. For example, if one takes the headmaster's letter, given that the Home Office Presenting Officer was not in attendance, it ought to have been put to the Appellant when he was giving his evidence, and yet this did not happen. The headmaster's letter is from a time which was four months before the hearing. It was significant evidence and it could not simply be cast aside. In the same way, if one looks at paragraph 51, the judge was not rejecting the evidence when she stated that, "I consider that the dates of the documentary evidence to show cohabitation and of the Appellant playing a role in the children's lives is shortly prior to or following the Appellant's application". That may not be cohabitation for the full two years but it was still an acceptance by the judge of a period of cohabitation. Finally, if one looks at the photographs, the Appellant is not just placing reliance on a photograph from the child's graduation and another photograph of the family at a beach, but the entire range of the photographs which show the Appellant and his family in a variety of different settings, which can not be ignored. He asked me to allow the appeal.

Error of Law

19. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that it falls to be set aside. My reasons are as follows. It is one thing to say that the parties are not able to demonstrate that they have had evidence produced of cohabitation for a period of two years. It is, however, entirely different to say that the parties have produced no evidence whatsoever of any cohabitation. The judge's statement that "the dates of the documentary evidence" do "show cohabitation and of the Appellant playing a role in the children's lives" is one that on a balance of probabilities shows there to be a genuine relationship even if it is "shortly prior to or following the Appellant's application" (paragraph 51).

20. Second, the letter from Bridgewater Primary School, by the executive headteacher, specifically refers to the child being picked up from school and occasionally dropped off. That is a very clear reference to the role of the Appellant in the life of the child, and one which it cannot just be assumed that the headteacher put his name to without having any knowledge of that fact himself. Indeed, there is a letter from the child (at page 20) referring

to how her stepdad makes a barbeque and her mother goes to work and how he helps the mother out in the care of the house and the looking after of the children. These matters should have been put to the Appellant, in the absence of the Presenting Officer being in attendance, if there was any doubt about this evidence.

21. Finally, even if there is only one dated photograph from 2022, it is a significant photograph of a child's graduation with both parents being flanked on each side, which deserved a proper consideration alongside the other photographs, given the number that were put in evidence.

Notice of Decision

22. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Dilks under Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding, which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. I should add that in relisting this appeal, the Tribunal Service should liaise with the clerk of Mr Collins who can be reached at 0207-421-8000.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023