



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Case No: UI-
2022-006390**
**First-tier Tribunal No:
EA/06317/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 25 September 2024**

Before

**UPPER TRIBUNAL JUDGE LANE
UPPER TRIBUNAL JUDGE LODATO**

Between

**KOUAME KAN JEAN-BAPTISTE STEPHANE KOUASSI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Not present or legally represented. The Sponsor attended in person

For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 23 September 2024

DECISION AND REASONS

1. Following the resumed hearing in this appeal on 23 September 2024, we now remake the decision and provide our reasons. The background to the appeal is set out in detail in the error of law decision of Upper Tribunal Judges Smith and Bulpitt dated 13 August 2024 which we have annexed to our decision. In short, the appellant, a citizen of Ivory Coast, appeals against the respondent's decision dated 18 June 2022 refusing him status under the EU Settlement Scheme ('EUSS') as the spouse of an EEA (Spanish) national, Ms Miriam Vargas ('the sponsor'). The Upper Tribunal

at the initial hearing found that the First-tier Tribunal, which had allowed the appellant's appeal, had erred in law and set aside its decision.

2. At the resumed hearing, the appellant did not attend and did not provide any reason for failing to do so. We are satisfied that the notice of hearing was duly served on the appellant at his last known address. It is clear that he was aware of the venue and date of the hearing because the sponsor attended in person and told us that she had been given the details of the hearing by the appellant. We were satisfied that it was in the interests of justice to proceed in the absence of the appellant. We explained the procedure of the Tribunal to the sponsor, who speaks reasonably good English and who did not request an interpreter. We are satisfied that the sponsor understood what was said and that we gave her every opportunity to make submissions. The burden of proof in the appeal is on the appellant and standard of proof is the balance of probabilities.
3. The sponsor was cross examined by Mr Tan, Senior Presenting Officer, who appeared for the respondent. In her submissions, the sponsor said that she had not been involved in drafting the appellant's application to the respondent. She also sought to blame the appellant's previous representatives for allowing inconsistencies to appear in the appellant's evidence to the Tribunal. She urged us to allow the appeal as she had been 'waiting for three years.'
4. As the Upper Tribunal observed in its error of law decision, the appellant's case had not been advanced before the First-tier Tribunal on the basis that the appellant and sponsor have been in a durable relationship. However, the appellant cannot succeed under Annex 1 to Appendix EU (FP), paragraphs (a) and (b) as he has never been in the United Kingdom and has never lived with the sponsor. As the previous Tribunal noted [36], 'that leaves the issue of whether there is "significant evidence of the durable relationship". Under Appendix EU(FP) that is therefore the evidence which the Appellant and Sponsor need to provide in order to satisfy the Immigration Rules (*sic*).' The sponsor did not seek to persuade us that the appellant could succeed by any other route under the Immigration Rules.
5. The evidence adduced by the appellant, including the sponsor's oral evidence before us, is problematic. In our opinion, not only has the appellant failed to produce 'significant' evidence of a durable relationship, he has produced no reliable evidence whatever of any such a relationship with the sponsor. The appellant's application, a previous witness statement and the sponsor's oral evidence before us have variously asserted that the appellant and sponsor had first met in 2015, but also in 2019, that their relationship had begun in 2018, but also in

2020, and that the appellant had proposed marriage to the sponsor in 2019, but also in 2020. As Mr Tan correctly submitted, the appellant had to prove that he and the sponsor had been in a durable relationship before 2020 and since the application for entry clearance had been made in 2022. On the evidence before us, he has wholly failed to do so. The evidence has no consistency and we are satisfied that nothing which either the appellant or sponsor has said about their claimed relationship is reliable. The appellant has consequently failed to discharge the burden of proof in the appeal. Accordingly, we remake the decision dismissing the appellant's appeal against the decision of the respondent dated 2 December 2022.

Notice of Decision

We have remade the decision. The appellant's appeal against the decision of the respondent dated 2 December 2022 is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 23 September 2024