IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003160

First-tier Tribunal No: EA/11782/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE MANDALIA

Between

LIDIYA UKRAYINETS GRUSTILINA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 11 March 2024

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Taylor ("the Judge"), promulgated on 16 June 2023, in which the Judge dismissed the appellant's appeal against the refusal of her application under the EU Settlement Scheme as a family member of a naturalised British citizen.
2. The appellant is a citizen of Spain born on 30 December 1985.
3. The Judge noted the issues in dispute were:

   a) whether the appellant had provided the required evidence of family relationship for a durable partner or a relevant naturalised British citizen, namely a valid registration certificate of family permit issued under the EEA Regulations, or a family permit issued under the EU SS.

b) In addition to the required evidence, whether the appellant has shown that the relationship continues to subsist.

4. The Judge's findings are set out at [9] in the briefest terms: *"I find that the appellant has not provided the required evidence of family relationship. She has not provided either a registration certificate nor a family permit under either the 2016 EEA Regulations or the EUSS".*
5. The appellant sought permission to appeal claiming she had proved that she is in a long-term relationship with her partner Marchin Krajnik, that she had presented documents such as a rent agreement, health insurance, photographs, electricity bills, joint bank account etc, and that no one had told her what evidence she had to provide, and the fact that she and her partner were living together, and are still living together, strongly proves that they are in a relationship.
6. Permission to appeal was refused by another judge of the First-tier Tribunal and renewed to the Upper Tribunal on similar grounds.
7. Permission to appeal was granted by Upper Tribunal Judge S. Smith on 7 November 2023, the operative part of the grant being in the following terms:

    1. The appellant, a naturalised citizen of Spain of Ukrainian origin, applied under the EU Settlement Scheme as the durable partner of her Polish (and now naturalised-British) sponsor. She moved to the UK in November 2021, and was granted a Certificate of Application. She and the sponsor say that they have been in a relationship for ten years, conducted mostly in Spain.
    2. The appellant and the sponsor are litigants in person and were clearly unfamiliar with the processes to be followed before the judge. It is, therefore, surprising that the judge's decision is as brief as it is, without any reference to even the relevant provisions of the relevant Immigration Rules, or the EU Withdrawal Agreement. The appellant says that she does not understand why she lost the case, since she provided evidence of the durability of her relationship with the sponsor. From the brevity of the decision, that is understandable.
    3. On the face of it, it is arguable that the appellant meets the criteria in Article 10(4) of the EU Withdrawal Agreement. It is arguable that the judge should have considered that provision and given clearer reasons under the Immigration Rules.

8. The application was refused on 17 August 2022, the operative part of which read:

    The required evidence of family relationship for a durable partner of a relevant naturalised British citizen where the durable partner does not have a documented right of permanent residence, is a valid registration certificate or family permit issued under the EEA Regulations or a family permit issued under the EU settlement scheme (or by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man) as the durable partner as at relevant naturalised British citizen and evidence which satisfies the Secretary of State that the relationship continues to subsist. Home Office records do not show that you have been issued with a registration certificate or family permit under the EEA Regulations or a family permit issued under the EU settlement scheme as a durable partner of a relevant naturalised British citizen, and you have not provided a relevant document issued on this basis by any of the Islands.

    As you have not provided the required evidence of your relationship as a durable partner of a relevant naturalised British citizen it is considered that, from the information available, you do not meet the eligibility requirements for settled status set out in rule EU 11 of Appendix EU to the Immigration Rules are set out in condition 1 of rule EU 14 of that Appendix. Therefore, you have been refused settled status and pre-settled status under rule EU 6.

9. The grant permission to appeal refers to paragraph 10(4) of the Withdrawal Agreement which reads:

> 4. Without prejudice to any right to residence which the persons concerned may have in their own right, the host State shall, in accordance with its national legislation and in accordance with point (b) of Article 3(2) of Directive 2004/38/EC, facilitate entry and residence for the partner with whom the person referred to in points (a) to (d) of paragraph 1 of this Article has a durable relationship, duly attested, where that partner resided outside the host State before the end of the transition period, provided that the relationship was durable before the end of the transition period and continues at the time the partner seeks residence under this Part.

10. The term 'duly attested' is taken to refer to something that is done in the correct way.

Discussion and analysis

11. As part of the issue-based approach to determining appeals and judgement writing in the First-tier Tribunal, judges sitting there are being encouraged to write shorter more succinct determinations. This appeal demonstrates, however, how this can lead to an error of law on the basis of lack of adequate reasoning if a party who reads the determination is unable to understand the conclusion.
12. In this appeal, whilst it can be seen the appellant had lost, it was not possible for her to understand why, especially as she does not have the benefit of legal representation.
13. Having given appropriate consideration to the matter we conclude that the Judge has materially erred in law on the basis of lack of reasoning which is material to the decision. We set the decision aside.
14. In terms of future management of the appeal, during the hearing the appellant shared with us that she was no longer with her partner and that their relationship had broken down. There was mention of domestic violence. She has moved into other accommodation.
15. Mr Bates also indicated that following consultation with his colleague Mr Deller, a recognised expert on EU law, the particular facts of this appeal raise another potential issue that was not considered by the Judge. This is that at the specified date of 11 PM 31 December 2020 the appellant and her partner were living together outside the UK in a durable relationship. There was no need therefore for them to have any formal documentation to prove they were in the durable relationship as such was only required if an application was made in the UK i.e. by a person coming from outside the UK to join a qualifying EU national.
16. We find it is appropriate for the appeal to be remitted to the First-tier Tribunal sitting at Birmingham to be heard afresh by a judge other than Judge Taylor. In coming to that conclusion we have considered the guidance provided by the Upper Tribunal in Begum (remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), the Practice Direction and the Practice Statement, and the general principle that the Upper Tribunal will retain a case for the decision to be remade. In this appeal, however, extensive fact finding will be required and analysis of the point raised by Mr Bates that has not been previously considered. We also find this is an appeal in which the appellant should be granted a right to have the matter determined by the First-tier Tribunal, preserving the right of appeal to the Upper Tribunal if necessary.
17. There was some discussion during the course of the hearing about whether the appellant had alternative routes to enable her to remain in the United Kingdom under either the Immigration Rules or Article 8 ECHR. If it is her intention to

pursue either of those routes rather than the current litigation she is asked to advise the First-tier Tribunal sitting at Birmingham without delay to ensure appropriate case management directions can be given.

Notice of Decision

18. The First-tier Tribunal materially erred in law. We set that decision aside. We substitute a decision by remitting the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Taylor.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber