Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/02443/2014**

THE IMMIGRATION ACTS

Heard at Field House **Decision and Reasons Promulgated**

On 12 December 2014 **On 26 June 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Awais Zia
(Anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms. S. Lloyd of Counsel instructed by Halliday Reeves.

For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Ross promulgated on 28 July 2014, dismissing the Appellant's appeal against a decision dated 28 March 2014 to remove him from the UK.

Background

2. The Appellant is a national of Pakistan born on 8 July 1994. His immigration history is a matter of record and is summarised at paragraphs 1-

4 of the decision of the First-tier Tribunal: it is unnecessary to repeat that history in detail here. In summary, the Appellant made an application for asylum in November 2010 which was refused in January 2011; a further application for humanitarian protection was refused on 28 March 2014. The Appellant lodged an appeal with the IAC. During the pendency of the appeal his representatives raised with the Tribunal an issue under the Immigration (European Economic Area) Regulations 2006: indeed when the matter came before the First-tier Tribunal it was only the Regulations that were relied upon: see determination at paragraph 5, and also Skeleton Argument before the First-tier Tribunal dated 9 July 2014.

3. The First-tier Tribunal Judge dismissed the appeal for reasons set out in his determination.

4. The Appellant sought permission to appeal to the Upper Tribunal which was initially refused by First-tier Tribunal Judge Parkes, but subsequently granted by Upper Tribunal Judge Coker on 17 October 2014.

Consideration

5. The Appellant's case under the EEA Regulations was based on his relationship with Ms Vera Silverio, a Portuguese national with a permanent right of residence in the UK. It was his case that he was in a 'durable relationship' with Ms Silverio such as to make him an extended family member within the meaning of regulation 8(5).

6. In written submissions by way of Skeleton Argument before the First-tier Tribunal the Appellant directed the Judge's attention to the Respondent's Guidance notes - in which it is stated "*You would generally need to show us that you have been in a subsisting relationship for 2 years or more*" – before emphasising that there was no specified time requirement in either the Directive 2004/38/EEC or the Regulations, and making reference to the case of **YB (EEA reg 17(4) – proper approach) Ivory Coast [2008] UKAIT 00062**.

7. In my judgement it is clear that the First-tier Tribunal Judge had regard to this framework, as advanced by the Appellant, in determining the appeal. The Judge directed himself under a sub-heading 'The Law' appropriately to a number of matters including in the following terms at paragraph 15: "*The term durable relationship is not defined in the regulations. The respondent's guidelines indicate that the relationship is considered to be durable if the parties have been living together for at least two years. However this is not the test laid out in regulations, which does not define any period of time*".

8. In the premises the Judge accepted that Ms Silverio was the Appellant's girlfriend, that she was an EEA national, that she had a permanent right of residence in the UK, and that she was a 'qualified person' within the meaning of the Regulations. Accordingly the Judge identified that the "*central issue*" was whether the Appellant and Ms Silverio were in a 'durable relationship'. (See paragraph 16.)

9. The Judge then gave consideration to the evidence and set out his findings with reasons. He accepted "*that there has been a relationship between them going back to September 2012*" (paragraph 17). The Judge did not, however, accept the period of cohabitation to be as claimed by the Appellant (paragraph 17); moreover he considered the Appellant "*not a credible witness*" (paragraph 18). (The Judge gave reasons for these findings in those respective paragraphs.) The Judge set out his conclusions at paragraph 19 in the following terms:

> "*I consider that the parties have not established that they are in a durable relationship. I consider that the appellant has only been able to prove that they have lived together from 23 September 2013, a period of approximately 10 months. I do not consider that this constitutes a durable relationship, and the appeal in relation to the 2006 regulations is therefore dismissed.*"

10. The Judge also dismissed the Appellant's appeal under Article 8 of the ECHR - notwithstanding that no separate submissions were made on it and it did not feature in the Appellant's Skeleton Argument.

11. The Grounds in support of the application for permission to appeal are threefold: that the Judge erred in relation to family life; erred in relation to durability of relationship; and erred in relation to credibility. Ms Lloyd indicated at the outset before me that she did not pursue the ground in respect of credibility. In any event it is to be noted that the basis upon which permission to appeal was granted was essentially whether or not the Judge had given adequate reasons for concluding that the relationship was not a durable relationship given his findings of fact. (Whilst Judge Coker did not seek to limit the grant of leave to any particular ground, she nonetheless noted that it was unlikely that the Article 8 ground would succeed if the durable relationship ground did not.)

12. In my judgement the Appellant's challenge to the findings of the First-tier Tribunal are essentially a disagreement with the conclusion that the relationship was not a durable relationship as of the date of the hearing before the First-tier Tribunal. Indeed, it seemed to me that in seeking to make good the challenge Ms Lloyd essentially reiterated the submissions in respect of the absence of any definitive guidelines – which, as I have already noted above, the Judge accepted in his self-direction – and otherwise rehearsed aspects of the evidence relating to the relationship – which in my

judgement the Judge had full regard to in setting out the evidence that was before (paragraphs 6–11). As such, the challenge was really no more than an attempt to reargue the case and urge a different conclusion.

13. There is indeed no definition of durable relationship by reference to period of time: some assistance is to be gleaned from the case of **YB** as to the approach to be taken, but essentially it is an evaluation that is fact-sensitive and dependent upon the evidence in any particular case. In my judgement it was entirely open to the First-tier Tribunal Judge to conclude that a relationship of less than 2 years, during which cohabitation had taken place only for the last 10 months, did not amount to a durable relationship. In this context it is to be noted that the Judge, for entirely sustainable and now unchallenged reasons, found that the Appellant had not been truthful in his assertions as to the length of the period of cohabitation, and indeed not to be a truthful witness generally. To that end, in my judgement, there was nothing reliable on the Appellant's part by way of evidence as to the nature or quality of his relationship, and nothing reliable as to his long-term intentions in respect of the relationship. Accordingly the only objectively reliable aspect of the evidence that might or might not indicate durability was that of the passage of time. It was entirely open – and in my judgement indeed reasonable – for the Judge to conclude that insufficient time had passed to demonstrate durability.

14. In the circumstances I find no error of law or material inadequacy of reasoning.

15. As regards the Article 8 challenge, I essentially endorse the observations of Judge Coker in granting permission to appeal. Moreover I note that the matter was not articulated before the First-tier Tribunal Judge, and it seems to me inappropriate for it now to be pursued before the Upper Tribunal. The reality is this is a relatively brief relationship formed at a time when the Appellant was present in the UK with a precarious immigration status, where the Judge had found the Appellant to be untruthful to an extent that there were doubts as to his motivation in forming a relationship with an EEA national, and where there were otherwise no matters of significance that took this case beyond the yardstick of proportionality set by the Immigration Rules.

16. In all the circumstances I identify no material error in respect of the Article 8 assessment undertaken by the First-tier Tribunal Judge, particularly bearing in mind the context of no Article 8 case having been advanced before the First-tier Tribunal on behalf of the Appellant by way of submissions.

Notice of Decision

17. The decision of the First-tier Tribunal Judge involved no material error of law and stands.

18. The appeal remains dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 23 June 2015