



**Upper Tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/03699/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> April 2019**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> April 2019**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**RAKESH KUMAR  
[Anonymity direction not made]**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Mr A Jafar, instructed by Mayfair Solicitors

For the respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Greesley promulgated 11.1.19, dismissing his appeal against the decision of the Secretary of State, dated 26.11.15, to refuse his application made on 11.4.15 for an EEA Residence Card as the EFM partner in a durable relationship with an EEA national exercising Treaty rights in the UK.
2. First-tier Tribunal Judge Cruthers granted permission to appeal on 15.2.19.

*Error of Law*

3. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
4. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law. Nor is it an error of law for a judge not to have regard to evidence of events arising after the decision or for no account to have been taken of evidence not put before the tribunal. Irrationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because a judge has concluded that the story proffered is untrue. However, if a point of evidence of significance has been ignored or misunderstood, that may be a failure to take into account a material consideration.
5. The application made in 2015 was refused on the basis that the respondent expected to see evidence of a durable relationship over a documented and sustained period of at least two years. The claim that the appellant and the sponsor met at work in April 2013 and had been living together since June 2013 was said to be contradicted by the evidence referred to in the decision, suggesting that at the earliest the sponsor had been living at the appellant's address from April 2014 and not before. It was asserted that false representations had been made to obtain a NI certificate. The evidence was found to be insufficient to establish a durable relationship.
6. On appeal, Judge Greasley recognised that some aspects of the evidence were consistent with the factual basis of claim but found material inconsistencies in other aspects, leading to the conclusion that they were not in a durable relationship. Nor was the judge able to accept that they were even cohabiting together, given the number of other occupants at their current address. The false representation issue was not pursued.
7. In granting permission to appeal, Judge Cruthers considered it arguable that some of the reasoning provided between [32] and [38] of the decision for rejecting the claim of a durable relationship with a Romanian national may be flawed. Judge Cruthers also warned that the granting of permission was no indication that the appeal would ultimately be successful, as it might be thought that at least some of the reasons given are valid. Judge Cruthers also suggested that the issue of the sponsor's prior marriage may remain a live issue.
8. Between [32] and [38] the judge gave reasons for concluding that the appellant's partner had little knowledge of his life and employment in India

prior to the commencement of the relationship; They also gave inconsistent evidence as to their respective religions and attendance at places of worship; and they gave different answers to questions about who was living at their property and to whom the rent was paid. The judge considered the material inconsistencies in important areas of their account damaged their credibility so that the claim of a durable relationship could not be accepted.

9. The grounds from [4] onwards criticise the judge's reasoning for the conclusions mentioned above. For example, it is suggested that evidence as to who the rent was paid to was "not as inconsistent" as the judge found at [36]. In the light of Mr Jafar's submissions, I have carefully read the judge's summary of the evidence on this issue at [22] and [28]. It is clear that the appellant and the sponsor gave a different account as to whom the rent was paid and whether the landlord was male or female and whether they lived on the premises. I reject the assertion that there was no inconsistency or that the finding was made without evidence being called on the matter. The inconsistency arose directly from the oral evidence of the appellant and the sponsor. That one said that it was given to a third person of unnamed gender does not assist the appellant.
10. Paragraph [5] of the grounds criticises the judge's findings of inconsistency on the issue of attendance at the respective places of worship of the appellant and the sponsor as set out at [32] and [33] of the decision. However, the sponsor's and the appellant's evidence differed as to how often and when they last visited the Temple, where the sponsor's church was based, and when she last visited there. I do not accept the argument that there is no material difference in geographical location between Harrow and Edgware, even though, as Mr Jafar pointed out, the two towns or areas neighbour each other. The argument at [5] of the grounds that no or no sufficient reasons were given is not sustainable and is no more than a disagreement with the decision.
11. Similarly, I find that the judge gave cogent reasons for finding at [34] that the sponsor knew little of the appellant's life and employment in India. Again, the criticisms are mere disagreements with the judge's reasoning. Those reasons were open to the judge and nothing in the grounds or Mr Jafar's submissions demonstrates that they were perverse.
12. Finally, the grounds at [7] criticise the finding at [36] of the decision relied on to undermine the claim of residing together at the same address. Reliance is made in the grounds on the "370 odd pages of documentary evidence" in the appellant's bundle adduced in support of cohabitation. It is correct that the refusal decision stated that the earliest evidence of the sponsor living at the same address as the appellant was a water bill dated 23.8.14. However, the claim was to have cohabited since June 2013, which was undermined and in turn undermined the credibility of the claim. It is not entirely clear whether continued cohabitation after that date was accepted by the respondent, but I accept that the refusal decision states: "From the contents of the documents, it is calculated they show (the

sponsor's) residence at your address since April 2014." The fact remains that mere cohabitation whilst capable of being evidence in support of the appellants' claim, was insufficient to demonstrate a durable relationship. Judge Greasley pointed out that although the sponsor claimed there was a family with two children residing at the property, she in fact stated that there were 10 occupants. As noted above, they differed between them as to whether the landlord was male or female or was also resident at the property.

13. Even if, as claimed in the grounds, Judge Greasley was going behind a concession by the respondent, this one issue is insufficient to justify setting the rest of the findings aside. Independently of an inconsistency as to who or how many people actually lived at the property, the fact of cohabitation was not determinative of the appellant and the sponsor being in a durable relationship rather than merely cohabiting, along with a significant number of others, perhaps as many as 10, at a single address. In the circumstances, if this was an error of law, it was not material to the overall conclusion that the appellant had failed to demonstrate on the balance of probabilities that he and the sponsor were and had been in a durable relationship as claimed.
14. In summary, I have concluded that the challenge to the decision of the First-tier Tribunal is little more than a disagreement with the findings which were open to the judge on the evidence and for which cogent reasons have been provided. It was for the appellant to demonstrate a durable relationship and the judge has explained in clear terms why he failed.

#### *Decision*

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

**Signed**

**DMW Pickup**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

**Signed**

**DMW Pickup**

**Deputy Upper Tribunal Judge Pickup**

**Dated**