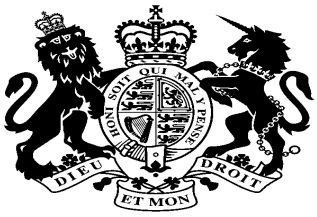

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/22871/2018

THE IMMIGRATION ACTS

Field House	**Decision & Reasons Promulgated**
On 29th October 2019	**On 31st October 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

VR
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr RD, Sponsor
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Venezuela born in July 1990. He applied for entry clearance to come to the UK as the same sex partner of a British citizen, whom he later married in Denmark on 19th December 2018. The respondent refused the application made on 26th June 2018 on 27th September 2018. His appeal against the

decision was decided on the papers and dismissed by First-tier Tribunal Judge Hobson in a determination promulgated on the 29th May 2019.

2. The appellant was refused a request for expedition of the hearing before the First-tier Tribunal on 22nd March 2019 by Judge of the First-tier Tribunal Kaler, but this was later done administratively.

3. Permission to appeal was granted by Upper Tribunal Judge McWilliam on 15th September 2019 on the basis that it was arguable that the First-tier judge had erred in law as there was an arguable procedural irregularity as it was arguably unclear which date the appellant had to serve his bundle by.

4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

5. The grounds of appeal argue that the appellant, who acts in person, did not have a fair hearing because it is contended that the First-tier Tribunal did not place all of the 192 pages of documents supplied by the appellant by special delivery on 30th May 2019 (which had been filed in this way as he could not email them as an attachment due to the size of the bundle) before the Judge, and instead the Judge only had the documents lodged with the appeal notice and some evidence submitted on 8th January 2019. The appellant did not believe that the case would be heard on 29th May 2019 due to an assurance by First-tier Tribunal staff, and thus believed that his full evidence would be before the Judge. The evidence filed on 30th May 2019 would have addressed the concerns that led to the dismissal of the appeal.

6. Ms Everett accepted for the respondent that there has been a procedural unfairness amounting to an error of law, in relation to the full documents not being before the First-tier Tribunal Judge who determined the appeal, in light of what was said in the HM Courts & Tribunals Service letter of 2nd September 2019.

7. I explained to the sponsor that there was an option, which would normally be followed, that the case was remitted for hearing de novo before the First-tier Tribunal, but that there was also an option that we would remake the hearing immediately. The sponsor said that he wished to proceed immediately with the remaking. Ms Everett was also happy to proceed with the remaking, but I gave her time to peruse the large bundle of documents lodged by the appellant before we commenced the remaking hearing. At the end of that hearing I informed the sponsor that I would allow the appeal but that I would set out my full reasons in writing.

Conclusions – Error of Law

8. There is conclusively evidence supporting the appellant's contention that he was told his case would not be heard until 30th May 2019, in the form of a letter of 2nd

September 2019 from the HM Courts Customer Investigation Team which accepts that the appellant was misled into believing that he could submit his bundle by post in a timely way by sending it to arrive on the 30th May 2019, when in fact by so doing it could not have reached the judge in time. The letter offers an ex gratia payment of £100 as a goodwill gesture for this error. In these circumstances I find that the First-tier Tribunal hearing was procedurally unfair as material evidence, properly submitted, was not considered.

Evidence and Submissions - Remaking

9. At the start of the remaking hearing I clarified the issues. There were two issues raised as a result of the refusal: it was said in the refusal that there was insufficient evidence that the appellant and his partner had met, and that they therefore could not therefore meet the eligibility requirement at paragraph E-ECP 2.5 of Appendix FM to the Immigration Rules. Secondly, even if this requirement were satisfied, the appellant and his sponsor had not shown that their relationship was genuine and subsisting and that they intended to live together permanently in the UK, and thus could not fulfil paragraphs E-ECP 2.6 and 2.10 of Appendix FM to the Immigration Rules. The suitability, financial and English language requirements were accepted as being met in the refusal.

10. There was no objection from the respondent to the admitting of further evidence updating the progress of the relationship from May 2019 to the present, and so I have admitted that evidence as clearly it could not have been lodged previously, it was properly served on the respondent, and assists the Upper Tribunal in the remaking of the appeal.

11. The appellant and his partner met online in May 2018, but they first met in person on 29th June 2018 in Buenos Aires. This is supported by the evidence of the sponsor, passport stamps, airline documents and room booking documents, this date is three days after the submission of the application but well before the decision. It is clearly a requirement of the Immigration Rules at Appendix FM E-ECP 2.5 that the couple must have met but it is not said in the Immigration Rules that this has to be so at the date of application, in contrast, for instance, to the requirement that the couple are over the age of 18 years. Ms Everett indicated that she accepted that the requirement to have met in person had to be satisfied at the date of decision under the Rules, and that she was satisfied on the evidence that this had taken place. As such the only issue that needed to be determined was whether the relationship was genuine and subsisting, and whether the couple intended to live together permanently.

12. The sponsor confirmed his name and address and that the information in the document "Appellant's Reply to ECM Appeal Review" at pages 9 to 23 of the bundle was true and correct. In short summary the evidence in the bundle and given orally is as follows. The appellant and sponsor met via the www.badoo.com online dating website in May 2018. They have been video chatting everyday using WhatsApp and also use a phone services Rebtel and Movistar, and met in person

for the first time in Buenos Aires on 29th June 2018. The sponsor then visited the appellant and met his parents in Venezuela in July 2018. The couple were married in Denmark on 19th December 2018, and had their honeymoon in Paris. They chose to marry in Denmark as the sponsor wished to visit that country and had never done so. The sponsor accepts that their relationship developed quickly. They met again in person again in Madrid in August 2019. The sponsor does not wish to make their home in Venezuela because of the difficulties in that country, and also due to his family and religious community responsibilities in the UK. The sponsor has a good friend who have written a letter of support confirming that the relationship is genuine, but he did not think it was necessary to bring him to give evidence before the Upper Tribunal. The sponsor and appellant are committed to live together permanently as a married couple in a shared home, and are making joint decisions about the décor and fittings.

13. Ms Everett submitted that whilst the original refusal and the ECM review gave reasonable reasons for refusing there was perhaps a failure to deal with the substance of the evidence submitted, and she accepted that she could not properly make any further submissions given the wealth of evidence before the Upper Tribunal.

14. Mr RD submitted that the appeal should be allowed because there was a large amount of evidence which showed that his relationship with the appellant was genuine; that they were planning their joint home together; that they had been in continuous contact via social media; and that they had spent time face to face with three holidays together in Argentina, Denmark/France and Spain.

Conclusions – Remaking

15. As indicated above I find that the requirement to have met in person at the date of decision at paragraph E-ECP 2.5 of Appendix FM to the Immigration Rules is met because the appellant and Mr DM had met in Buenos Aires between 29th June 2018 and 7th July 2018. This meeting was confirmed by the evidence of Mr RD, which I found to be entirely straight forward and credible, and is supported by documents which relate to the booking and payment for the hotel, passport stamps and airline documents including boarding passes.

16. I also find that the appellant and sponsor are, and were at the date of decision, in a genuine and subsisting relationship and intend/intended to live together permanently due to the detailed and extensive documentary evidence submitted in support of this, along with the confirmatory oral evidence of the sponsor.

17. The WhatsApp messages between the appellant and sponsor span the period 22nd May 2018 to 4th October 2019 and show intense messaging and video calls in this period with overtly romantic content which references the trips the couple have made together, their wedding, birthdays and plans for their life together in the UK. I am satisfied that they married in Denmark on 19th December 2018 in Denmark, and that they have spent time on holiday together in Denmark/Paris between 13th December 2018 and 23rd December 2018 and in Madrid between the

30th August and 7th September 2019 (as evidence by the sponsor's evidence, passport stamps, airline tickets and hotel bookings). There is also a significant amount of email and WhatsApp evidence showing the couple making arrangements for their marital home with respect to fittings etc, and also a letter from the sponsor friend, Mr SM, and the appellant's parents confirming that the appellant and sponsor are in a genuine relationship.

18. As such I am satisfied that the appellant and sponsor met all the requirements of the relevant Immigration Rules at the time of decision, and continue to do so. I find that the refusal of entry clearance interferes with their right to respect for family life, and that this interference is disproportionate to the legitimate aim as the appellant can, and did at the time of decision, met the requirements of the Immigration Rules in all respects and so there is no public interest in the appellant being excluded from the UK. The appellant speaks English and will be financially self-sufficient, as he has shown that he meets these requirements of the Immigration Rules.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal.

3. I re-make the decision in the appeal by allowing it on Article 8 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a potential of harm arising to the sponsor due to the views of his family and religious community with respect to his entering a same-sex relationship.

Signed: *Fiona Lindsley* Date: 30th October 2019
Upper Tribunal Judge Lindsley