Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/07031/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 14 October 2021	**On 15 November 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SAQIB JAVED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr J. Martin, instructed by Goodfellows Solicitors
For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who entered the UK on 19/01/09 with leave to enter as a student. It is not necessary for the purpose of this decision to set out his immigration history in any detail save to note that by 2015 further applications for leave to remain and subsequent legal challenges had failed. He remained in the UK without leave after that time.

2. The appellant says that he met a Dutch national, Ms Milou Maters, in December 2016 and their relationship grew from there. The relationship

was considered in a previous application for leave to remain on human rights grounds and in a previous application for a residence permit as a person who is in a durable relationship with an EU national. Both the appellant and Ms Maters gave evidence an earlier appeal against a decision to refuse a human rights claim. In a decision promulgated on 16 July 2018 First-tier Tribunal Judge O'Keefe found that there is was insufficient evidence to show that the appellant was in a durable relationship. Although the decision was not successfully appealed, I note that the judge did not in fact make any findings relating to the credibility of the oral evidence given by his partner.

3. This appeal is brought against the respondent's decision dated 12 December 2019 to refuse a residence permit as a durable partner on the ground that it was said that the appellant had failed to produce sufficient evidence of co-habitation. The issue of co-habitation, and evidence relating to the various addresses the couple say they lived, loomed large in the subsequent decision of First-tier Tribunal Judge Khan. Like the first judge, he made no clear findings about the oral evidence given by the appellant and his partner.

4. The appellant was granted permission to appeal to the Upper Tribunal. In a decision promulgated on 23 November 2020 I concluded that, while many of the judge's findings were open to him to make, the judge failed to take into account relevant evidence (annexed). The decision was set aside and listed for a resumed hearing in the Upper Tribunal to remake the decision.

Decision and reasons

5. The appellant and his partner attended the hearing to give evidence. I had the opportunity of hearing their evidence tested in cross-examination and to ask them some questions myself. They both gave their evidence in a natural and open way that did not appear to be rehearsed. Their evidence was consistent with one another. They were consistent in the nature and the number of hours worked by the sponsor. They were consistent in describing their living arrangements and their monthly expenses. They were also consistent in describing their living arrangements at previous addresses. They were consistent in describing other events that could not have been anticipated before the hearing. For example, the last time Ms Maters' family visited the UK in 2017, her visit to the Netherlands in May 2020 for her grandfather's funeral, and her last visit to spend time with her family in September 2021. Other recent events came out in the evidence in a natural way. When discussing why there was no evidence from friends in London, both were consistent in saying that Ms Maters works such long hours that they tend to spend time together when she is not at work. During the course of questioning they both said that Ms Maters was asked to attend a work event last Friday, but she decided not to go. Ms Cunha did not seek to argue that the witnesses were not credible. Indeed, she accepted that they had given credible evidence and had provided adequate explanations for a minor inconsistency.

6. In light of that submission, it was not necessary for Mr Martin to make full submissions. I asked him to point to any additional evidence that the appellant relied on. Mr Martin referred to various pieces of evidence in the bundle that also supported their claim to be in a durable relationship and to have been co-habiting since 2018.

7. There is plenty for evidence to show that Ms Maters lived at the addresses named. There is less formal evidence to show that the appellant lived at those addresses. The Immigration Act 2014 introduced a series of measures designed to create what was termed a 'hostile environment' for those without leave to remain. It is not possible for the appellant to be named on a tenancy agreement, to open a bank account, or to register formally for a range of other things. I accept that this provides an adequate explanation as to why it might be difficult for him to provide documentary evidence of his residence at certain addresses.

8. Mr Martin referred to the evidence detailing the visits Ms Maters made to see the appellant when he was in immigration detention in 2018 and copies of emails between the couple at the time. He pointed to correspondence from a mobile provider, the grant of immigration bail, and other official correspondence from the tribunal addressed to the appellant at the Barking Road address. Ms Maters was named as the surety. The appellant was bailed to her address. Mr Martin also referred to the numerous photographs of the appellant and his partner together in various different situations over a period of time. In relation to their current address at Rainsborough Avenue, which they moved to in February 2021, he referred to an NHS document inviting the appellant to make a covid vaccination appointment, a poll card from May 2021, and a utility bill covering a period in June-July 2021. The bundle also contained three mobile phone statements from July-September 2021.

9. Whilst much was made in the First-tier Tribunal decision about the evidence of co-habitation, it is not a requirement of European law for a couple to cohabit. What is important is the nature and strength of the ties between a couple. An evaluative assessment must be carried as to whether the couple can properly be said to be in a durable relationship. Having heard from the appellant and his partner, having assessed their evidence to be credible, and in light of the other documentary evidence before me, I am satisfied on the balance of probabilities that the appellant is in a durable relationship with the EEA sponsor and that he meets the requirements of regulation 8(5) of The Immigration (European Economic Area) Regulations 2016 relating to extended family members.

10. I conclude that the decision breaches the appellant's rights under the EU Treaties in respect of entry into or residence n the United Kingdom.

11. Transitional provisions were put in place for appeals begun before the United Kingdom's exit from the European Union to continue after exit day.

However, no provisions were put in place to outline what would happen when an appeal brought on EU law grounds was allowed after exit day, when the underlying EU law no longer applied. Since exit day, it is not possible to issue an EU residence card. I understand that the respondent has now put in place a concession for extended family members who succeed in appeals under the EEA Regulations 2016 brought before 31 December 2020 to be granted leave to remain under domestic immigration law. Ms Cunha confirmed that this was the case, although the details of the concession are not yet clear.

DECISION

The appeal is ALLOWED under the EEA Regulations 2016

Signed M. Canavan Date 14 October 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email