



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
2022-005041

Appeal Number: UI-  
EA/02106/2022

**THE IMMIGRATION ACTS**

**Heard at Field House,  
On 23 May 2023**

**Decision & Reasons  
Promulgated  
On 30 May 2023**

**Before**

**THE HON. MR JUSTICE LAVENDER  
UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS CECILIA YANKEY  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Esen Tufan, a Senior Home Office Presenting Officer  
For the Respondent: Mr Edward Akohene, solicitor with SLA Law Limited

**DECISION AND REASONS**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Malcolm, promulgated on 30 August 2022, allowing Cecilia Yankey's appeal against the Secretary of State's refusal, on 1 February 2022, of Miss Yankey's application, made on 18 September 2021, for a family

permit under the EU Settlement Scheme, as set out in Appendix EU (Family Permit) to the Immigration Rules.

2. Paragraph 6(1) of Appendix EU (Family Permit) provides as follows:

“The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

- (a) The applicant is not a British citizen;
- (b) The applicant is a family member of a relevant EEA citizen;
- (c) The relevant EEA citizen is resident in the UK or will be travelling to the UK with the applicant within six months of the date of application;
- (d) The applicant will be accompanying the relevant EEA citizen to the UK (or joining them in the UK) within six months of the date of application; and
- (e) The applicant (“A”) is not the spouse, civil partner or durable partner of a relevant EEA citizen (“B”) where a spouse, civil partner or durable partner of A or B has been granted an entry clearance under this Appendix, immediately before or since the specified date held a valid document in that capacity issued under the EEA Regulations or has been granted leave to enter or remain in the UK in that capacity under or outside the Immigration Rules.”

3. No issue arose in the present case in relation to sub-paragraphs (a), (c), (d) or (e). As to sub-paragraph (b), Miss Yankey, a national of and resident in Ghana, claimed that she was a family member of her sponsor, Joseph Ayebah Ekpale, a Belgian citizen who lived and worked at all material times in the United Kingdom

4. The definition of “family member of a relevant EEA citizen” in the Annex to Appendix EU (Family Permit) includes the following:

“a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that they are:

- (a) the spouse or civil partner of a relevant EEA citizen, and:
  - (i) (aa) the marriage was contracted or the civil partnership was formed before the specified date; or
  - (bb) the applicant was the durable partner of the relevant EEA citizen before the specified date (the definition of ‘durable partner’ in this table being met before that date rather than at the date of application) and the partnership remained durable at the specified date; and

(ii) the marriage or civil partnership continues to exist at the date of application;”

5. The “specified date” was 31 December 2020. Miss Yankey married Mr Ekpale after that date, on 11 February 2021. It was necessary, therefore, for her to show, pursuant to paragraph (a)(i)(bb) of the definition, that she was Mr Ekpale’s “durable partner” before the specified date and that the partnership remained durable at the specified date.

6. The definition of “durable partner” in the Annex to Appendix EU (Family Permit) consists of four paragraphs, as follows:

“(a) the applicant is, or (as the case may be) was, in a durable relationship with the relevant EEA citizen (or, as the case may be, with the qualifying British citizen), with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and

(b) where the applicant was resident in the UK and Islands as the durable partner of a relevant EEA citizen before the specified date, the applicant held a relevant document as the durable partner of the relevant EEA citizen or, where there is evidence which satisfies the entry clearance officer that the applicant was otherwise lawfully resident in the UK and Islands for the relevant period before the specified date (or where the applicant is a joining family member) or where the applicant relies on the relevant EEA citizen being a relevant person of Northern Ireland, there is evidence which satisfies the entry clearance officer that the durable partnership was formed and was durable before the specified date; and

(c) it is, or (as the case may be) was, not a durable partnership of convenience; and

(d) neither party has, or (as the case may be) had, another durable partner, a spouse or a civil partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person’s relationship with that party”

7. No issue arose in the present case in relation to paragraphs (b) to (d). As to paragraph (a), Miss Yankey claimed, and the Judge found, that she was, both at and before the specified date, in a durable relationship with Mr Ekpale. She did not claim that they had lived together for at least two years. Instead, she claimed, and the Judge found, that there was “other significant evidence of the durable relationship”. It is that finding which the Secretary of State challenges on this appeal.

8. The evidence before the Judge consisted of statements from Miss Yankey and Mr Ekpale, with various supporting documents, and Mr Ekpale’s oral evidence. In summary, Miss Yankey and Mr Ekpale met in Ghana in March 2018 and began their relationship in December 2018. She remained in

Ghana, where he visited for a month each year. While apart, they spoke daily by telephone and he regularly sent her money for her maintenance. Mr Ekpale was married when the relationship started, but his wife had left him in 2018 and he and his wife divorced in October 2020. Miss Yankey and Mr Ekpale kept quiet about their relationship while he was still married. As we have said, they married on 11 February 201 and, by the date of the hearing in the First-tier Tribunal, i.e. 11 July 2022, Miss Yankey was pregnant with Mr Ekpale's child.

9. The Judge expressed his conclusion as follows in paragraph 43 of his decision:

“Taking an overall view of the information and the evidence provided, I accept that the appellant and sponsor were in a durable relationship which started in December 2018 and led to their marriage in February 2021. I accept that there has been evidence of commitment in the relationship, and I am satisfied that there is significant evidence of a durable relationship.”

10. In her application for permission to appeal, the Secretary of State submitted that that conclusion was irrational. She also submitted that:

- (1) The Judge had confused the question whether the relationship was durable with the issue whether it was subsisting at the specified date.
- (2) The evidence did not show that Miss Yankey and Mr Ekpale had been in a “relationship akin to marriage” before the specified date.
- (3) An intention to marry, coupled with a subsequent marriage, did not amount to a durable relationship.
- (4) The evidence of the allegedly durable relationship was not “significant evidence”.

11. In our judgment, the Judge correctly identified the question which he had to consider and made a finding on the facts which it was open to him to make. There was no error of law in the Judge's decision.

12. It is clear from the wording of paragraph (a) of the definition of “durable partner” that there are two ways in which an applicant can show that he or she was in a durable relationship with a relevant EEA citizen before, and at, the specified date:

- (1) The first way is for the applicant to show that the couple had lived together in a relationship akin to a marriage or civil partnership for at least two years.
- (2) The second way is for the applicant to show that there was “other significant evidence of the durable relationship”.

13. The obvious point to make is that “other significant evidence of the durable relationship” will necessarily consist of something other than evidence that the couple had lived together in a relationship akin to a marriage or civil partnership for at least two years.
14. Indeed, the Secretary of State’s own guidance (*EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members*, Version 19.0, published on 12 April 2023) acknowledges that:
  - “ (1) The reference to the couple having lived together in a relationship akin to a marriage or civil partnership for at least 2 years is a rule of thumb, not a requirement.
  - (2) Where the couple have not lived together in a relationship akin to a marriage or civil partnership for at least for 2 years, you must consider in each case whether there is other significant evidence of a durable relationship, based on all the information and evidence provided by the applicant.”
15. We do not disagree with either of these propositions.
16. In this case, the Judge rightly addressed the question whether there was other significant evidence of a durable relationship. We see no basis for the allegation that he confused that question with a different question.
17. The meaning of the phrase “durable relationship” does not require elaboration. Indeed, it would be unhelpful for us to offer a paraphrase. The phrase used in the bracketed part of paragraph (a) of the definition is “durable relationship”. It is not “relationship akin to a civil marriage or partnership”. It may be that most, if not all, relationships which are found to be durable relationships will be akin to a civil marriage or partnership, but the question to be considered by the judge in any case such as the present is whether there is significant evidence of a durable relationship.
18. The evidence in this case demonstrated more than just an intention to marry, followed by a subsequent marriage. Whether the evidence constituted significant evidence of a durable relationship was a question for the Judge to determine on the facts of the case.
19. It has repeatedly been said that appellate courts and tribunals should exercise restraint when considering appeals against findings of fact: see, most recently, *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48, at paragraphs 2 and 3.
20. We see no basis for interfering with the Judge’s finding in the present case: the judge’s decision was open to him on the evidence and was not “rationally insupportable”.

### **Notice of Decision**

The appeal is dismissed under the Immigration Rules.

No anonymity direction is made.

Signed **Nicholas Lavender**  
2023

Date 30 May

The Hon. Mr Justice Lavender sitting as an Upper Tribunal Judge