



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000874

First-tier Tribunal No: EA/50355/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FLORIAN FASKO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alam instructed by SH Solicitors.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 3 August 2023

DECISION AND REASONS

1. In a decision promulgated on 28 June 2023 Upper Tribunal Judge Keith found an error of law in the decision of the First-tier Tribunal which dismissed the appellant's appeal against the refusal of his application for a residence card as an extended family member of an EEA national exercising treaty rights in the UK.
2. Judge Keith set aside the decision of the First-tier Tribunal but preserved its finding that the appellant's relationship with his partner is genuine.
3. Following the making of a judicial transfer order the matter comes before me for the purposes of substituting a decision to either allow or dismiss the appeal.
4. Mr Bates helpfully supplied the Tribunal and appellant's representative with an immigration chronology extracted from the Home Office computer records in the following terms:

The details below have been extracted from Home Office computer records to assist the Tribunal:

4.7.2019- claimed illegal entry, reference made of this being at Luton Airport.

3.9.2019- served illegal entry paperwork having been arrested by Police on suspicion of cultivation of cannabis. Subject stated he entered on a false passport (Greek) in a false I.D (claimed to be Nikolaos GEORGIOS).

2.10.2019- convicted of 2 offences (Produce controlled drug Class B (Cannabis)- 6-months sentence, Possess/Control ID docs with intent- 3-month sentence). Total 9 months sentence; Nottingham Crown Court. License conditions 18.1.2020-3.6.2020, post-sentence supervision 3.6.2020-18.1.2021.

11.10.2019- Served s120 Notice.

29.11.2019- Signed Deport Order made.

6.12.2019- Signed Deport Order served to Appellant at HMP Brinsford

31.12.2019- Removal Directions were set for 22.1.2020 at 20.00hrs flight to Albania; with escorts. Appellant subject of Deportation Order made under Sect 5(1) 1971 Immigration Act.

22.1.2020- Email received from Lexmark Legal Associates indicating Asylum claim lodged and raising Modern Slavery issues. Removal Directions deferred.

25.2.2020- Positive Reasonable Grounds decision made, served 26.2.2020.

27.3.2020- Appellant released from detention on bail to Flat 4, 60 Middlesborough Rd, Coventry, CV1 4DE.

3.7.2020- Appellant claims to have commenced a durable relationship with Anastasia Saoulidou.

25.11.2020- Appellant states co-habitation commences.

11.12.2020- EEA Residence Card application lodged as Extended Family Member.

20.1.2021- EEA application refused by SSHD.

5. The appellant states he was born in Albania on 13 November 2001 but moved to Greece with his family when he was approximately two years old. He claims he entered the UK on 4 July 2019 without having decided he wanted to settle, and first met his partner Anastasia on 29 June 2020. The appellant claims they entered into a relationship very quickly, spending Christmas together in 2020 together with Anastasia's mother, brother, and her brother's girlfriend. The appellant states he and Anastasia became engaged on 3 July 2021.
6. In his recent witness statement dated 18 July 2023 the appellant confirms he has not provided any evidence to show he is a tenant of the property they occupy with his partner because the landlord has refused to put his name on a tenancy agreement as he has no evidence he is working. The appellant claims he has lived with his current partner for the past three years and that they intend to live together as husband and wife and raise a family.
7. A statement by Anastasia, dated 18 July 2023, states she was born in Russia on 10 July 1994 but is now a Greek citizen. She entered the UK on 1 June 2019. She met the appellant on 3 July 2020 and on 25 November 2020 started living together and claims they have done so since at different addresses.
8. Anastasia refers to the fact that the appellant, although Albanian, has lived most of his life in Greece meaning they speak the same language and have a similar cultural and social outlook. Anastasia confirms on Christmas 2020 they spent time together in a family gathering and that on 3 July 2021 became engaged. Anastasia states she is working and has a tenancy agreement in her name, but the landlord would not agree to place the appellant on the rent book as he has no right to work. Anastasia confirms the rent she pays for her current tenancy includes all utility bills which means she has no separate bills for such services.
9. Anastasia states she has been supporting the appellant for the last three years and intends to do so until he is allowed to work so they can build a family life together.

10. A witness statement dated 18 July 2023 has been provided by Anastasia's brother, Christos, who states he has known the appellant since mid-2020, is aware of the relationship he has developed with his sister Anastasia, has noted a positive change in his sister's mood generally since she has been with the appellant, believes this to be genuine and honest relationship, and that the couple intend to form a family together.
11. A witness statement from the appellant's uncle, also dated 18 July 2023, confirms he was born in Albania on 16 June 1979, is a British citizen, and that the appellant is his brother's son. The statement refers to the relationship between the appellant and Anastasia which the witness states is very strong and durable and that he had personally attended their engagement celebration, and confirms Anastasia supports and maintains the appellant.
12. The appellant and Anastasia were cross examined and re-examined and I have taken into account the content of the replies given in their respective oral evidence which I do not need to set out verbatim in this decision.

Discussion and analysis

13. The Reasons for refusal letter was adopted by Mr Bates, with the exception of the preserved finding that the relationship between the appellant and Anastasia is genuine.
14. The reasons given for not issuing the appellant with a Residence Card as an extended family member of an EEA national exercising treaty rights in the UK are given as follows:

You have not provided adequate evidence that you are the partner of an EEA national, and that you have a durable relationship with them.

To assess whether your relationship is durable, we would expect you to be able to demonstrate that you have been residing together with your EEA national sponsor for a long term period in a relationship similar to marriage; that any previous relationship/marriage/civil partnership each of you may have had has broken down; and that you both are not related by birth.

As an unmarried partner you do not have an automatic right to reside under the Immigration (EEA Regulations) 2016 (as amended).

You have failed to submit sufficient evidence that you are in a long lasting and durable relationship. We would expect to see joint financial arrangements or proof that you are residing together.

Therefore you have failed to provide adequate evidence that you are in a durable relationship with Anastasia Saoulidou your EEA national sponsor and so your application falls for refusal.

As you have failed to effectively evidence your relationship no further consideration has been given to the other requirements which need to be satisfied under the Regulations including whether your EEA national sponsor is exercising Treaty rights as a qualified person.

15. There is merit in the submission by Mr Bates that the application made on 11 December 2020, when the relationship had only commenced on 3 July 2020 and therefore has only existed for between five or six months at the relevant time, did not establish that the relationship was durable as required by the decisionmaker.
16. It is, however, necessary for me to consider the situation pertaining at the date of the hearing.
17. It was submitted by Mr Bates that Anastasia was aware of the appellant's conviction and the nature of the same, that evidence of ongoing cohabitation was limited to the oral evidence with no documentary evidence, and that even

- though they claim to have been together since November 2020 no tenancy showing the appellant's name or a letter from the landlord had been provided.
18. The difficulty for the Secretary of State with this latter submission is that it is been made clear by the Home Office to landlords who let property to those who have no right to rent/occupy them, which include those with an adverse immigration status, could render the landlord liable to a substantial fine.
19. A person will have a right to rent a property if they are:
- a British or Irish citizen
 - have indefinite leave to remain
 - refugee status or humanitarian protection
 - settled or pre-settled status under the EU settlement scheme
 - permission to be in the UK, for example, on a work or student visa
 - the Home Officers granted them a time limited rights to rent.
20. Private landlords and agents are legally required to check the immigration status of all tenants, lodges and any other adults who would be living in the property. This is commonly known as the 'right to rent' check and has to take place before the tenancy starts.
21. Anastasia claimed that she rents a single room which she and the appellant occupy. Even if a room is rented out to a lodger the obligation upon the landlord is still to check their right to rent.
22. In light of the appellants immigration status it is not likely a landlord is going to be willing to name him on a tenancy agreement or provide evidence that the appellant is staying at his property. It was the evidence of both the appellant and Anastasia that the landlord is fully aware of the appellant's presence staying at the property. Whether this gives rise to any cause of action against the landlord by the Home Office is not a matter I need consider today. A recent announcement by the Home Office stated that the fines for landlords will increase in 2014 from £80 per lodger and £1,000 per occupier for a first breach to up to £5,000 per lodger and £10,000 per occupier. For repeat breaches up to £10,000 per lodger and £20,000 per occupier, up from £500 and £3000 respectively.
23. In light of the absence of lawful consent or evidence of the right to rent it must be accepted that even if the appellant and Anastasia's claims are credible in relation to the fact he lives with her and has done so for a considerable period of time, formal evidence of the same is highly unlikely to be made available from a landlord. I accept Mr Bates's submission that the most recent tenancy agreement makes no mention the appellant has permission to occupy the property, yet the evidence is that he does.
24. It was accepted the fact that the parties have agreed to marry and becoming engaged shows that the relationship has more likely than not reached a durable state.
25. Mr Bates questioned the reason for the relationship and whether it was based on Brexit, a desire to avoid the appellant being deported or other reasons, but that is not a matter raised in the reasons to refuse letter.
26. I do not accept the submission that the only evidence in relation to the nature of the relationship is the oral evidence as clearly the witness statements I have referred to above confirm the chronology of when the parties met and durable nature of the relationship.
27. On behalf of the appellant it was submitted some of the matters relied upon by Mr Bates would amount to a new refusal which was not before this Tribunal, that

there are several documents that are relied upon set out in the appellant's bundle, and that case law submitted referred to issues based on the Immigration Rules rather than the 2016 Regulations.

28. Article 8 ECHR was mentioned but this is not a matter in relation to which I have jurisdiction.

29. Regulation 12 (4) of the Immigration (EEA) Regulations 2016 reads:

- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
- (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

30. It is not made out to the extended family member, the appellant, wants to accompany the EEA national, Anastasia, to the United Kingdom or to join her there as the appellant is already in the UK living with her, as set out in the immigration history and evidence considered.

31. The refusal of entry clearance focused solely upon the question of whether the appellant and Anastasia were in a durable relationship. At that time they were not but I find on the balance of probabilities that the evidence supports a finding that as at the date of the hearing they are.

32. It was not disputed by Mr Bates that Anastasia is exercising treaty rights in the UK but there has not been in this case an extensive consideration of all relevant factors sufficient to enable the decision-maker to consider whether to exercise discretion in the appellant's favour, such that it will be appropriate to issue him with the family permit he seeks (or equivalent under the current applicable regime - EUSS).

33. To that extent I make a finding that the appellant has established that he is in a durable relationship with EEA national and to that extent has satisfied me that he is an extended family member.

34. I remit the appeal to the Secretary of State for the Home Department for consideration to be given to whether it is appropriate to issue an EEA family permit in light of all the circumstances of this appeal, including the appellant's criminality and consequential decisions.

Notice of Decision

35. The appeal is allowed to the extent set out above.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 September 2023

