



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-000040

First-tier Tribunal No: EA/01537/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 18<sup>th</sup> November 2024**

**Before**

**UPPER TRIBUNAL JUDGE NEVILLE**

**Between**

**JESUS ALBERTO REGGES GALLEGOS**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Louise Cobb, the sponsor

For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 22 October 2024**

**DECISION AND REASONS**

1. On 23 November 2020 the appellant, a national of Venezuela, made an application under the Immigration (European Economic Area) Regulations 2016 for a family permit to enter the United Kingdom as the partner of Ms Louise Cobb. The application was made under regulation 9(2), claiming a derivative right of residence.
2. The application was refused by the respondent on 8 January 2021 for two reasons, first because the application was taken as relying on the two being civil partners, and evidence of divorce to a previous spouse has not been provided, and second because the respondent was not satisfied that Ms Cobb had been exercising free movement rights in another EEA member state. The appeal against that decision was dismissed by the First-tier Tribunal on 22 September 2021, but that decision was set aside by Upper Tribunal Judge Lindsley and Deputy Upper Tribunal Judge Cotton

in a decision dated 13 April 2023. It was directed that the decision would be re-made in the Upper Tribunal. The subsequent delay in the case being heard appears to have been partly due to efforts to agree that the appellant could give evidence remotely from abroad, but ultimately the Spanish authorities were unwilling to provide their agreement.

3. At the hearing before me, I therefore heard evidence from Ms Cobb and considered the written evidence provided. There were some initial difficulties at the hearing collating the documents to be considered, but it was agreed that everyone had access to the same ones, albeit not all in the same order.

### **Issues and legal principles**

4. Relevant guidance is given in *ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan* [2019] UKUT 281 (IAC)
  - (i) The requirement to have transferred the centre of one's life to the host member state is not a requirement of EU law, nor is it endorsed by the CJEU.
  - (ii) Where an EU national of one state ("the home member state") has exercised the right of freedom of movement to take up work or self-employment in another EU state ("the host state"), his or her family members have a derivative right to enter the member state if the exercise of Treaty rights in the host state was "genuine" in the sense that it was real, substantive, or effective. It is for an appellant to show that there had been a genuine exercise of Treaty rights.
  - (iii) The question of whether family life was established and/or strengthened, and whether there has been a genuine exercise of Treaty rights requires a qualitative assessment which will be fact-specific and will need to bear in mind the following:
    - (1) Any work or self-employment must have been "genuine and effective" and not marginal or ancillary;
    - (2) The assessment of whether a stay in the host state was genuine does not involve an assessment of the intentions of the parties over and above a consideration of whether what they intended to do was in fact to exercise Treaty rights;
    - (3) There is no requirement for the EU national or his family to have integrated into the host member state, nor for the sole place of residence to be in the host state; there is no requirement to have severed ties with the home member state; albeit that these factors may, to a limited degree, be relevant to the qualitative assessment of whether the exercise of Treaty rights was genuine.
  - (iv) If it is alleged that the stay in the host member state was such that reg. 9 (4) applies, the burden is on the Secretary of State to show that there was an abuse of rights.

5. Ms Nwachuku helpfully confirmed that the outcome of the appeal depended on the appellant establishing the following:
  - a. That the appellant and Ms Cobb are married, in a civil partnership or are durable partners;
  - b. Have resided in another member state; and that residence is genuine in the sense that it was real, substantive, or effective.
6. It is for the appellant (and, in a practical sense) the sponsor, to prove the facts upon which they rely; if it is alleged that residence in the EEA member state was as a means of circumventing UK immigration law then that must be proved by the respondent, but that is not an allegation put forward in this appeal.

### **Findings of fact**

7. The couple's account, as taken from the written and oral evidence, can be summarised as follows. The appellant lives in Tenerife. His relationship with Ms Cobb began in September 2018 and was conducted online with occasional visits. Ms Cobb On 9 May 2020 Ms Cobb flew out to Tenerife. She had a flight back booked for a week or so later, which was cancelled by the airline due to the ongoing disruption caused by the Covid-19 pandemic, but she had only booked it as "a safety net" in case she realised on arrival that she made a mistake. She was happy to stay, and kept her existing employment with a British company as an AAT-qualified accounting technician; she had been able to work from home anyway. She has provided contemporaneous correspondence with her employer confirming her decision and discussing the practicalities.
8. On arrival the couple moved in together. They first lived at a property on Calle Irlanda, and there is a tenancy agreement for them both dated 15 June 2020 for one year. She said that the couple had lived at the same address from her arrival but without a tenancy in both their names. This is the address given on the application for a EEA family permit in November 2020. I need not name the second address, as it is where they claim to currently live, and there is an agreement dated 28 November 2020 for this property allowing for the property to be rented until 27 May 2021, and this document gives the correct previous address. The letting agent has written to confirm that he had shown the couple a number of properties in October and November 2020 and that they see Ms Cobb on a regular basis when she comes to the office to pay utility bills. The couple also paid Spanish taxes, and have provided various local government certificates giving both their identities and the correct address from late 2020 and early 2021.
9. Ms Cobb took Spanish lessons from July, for which evidence has been provided. The Spanish authorities issued her with a temporary residence document from 14 July 2020 and later a residence card valid from 25 September 2020. She has also provided mobile telephone bills for the second half of 2020, the activity on which is clearly consistent with her living in Spain.

10. I consider the documentary evidence discussed so far to provide significant support for the account of genuine residence in Spain. It is consistent with what might be expected, Ms Cobb was able to explain its provenance and significance when asked questions about it, and there is no reason to think that any of the documents could be readily falsified or fraudulently obtained without a high risk of detection.
11. One of the issues that concerned the First-tier Judge when he dismissed the appeal, and was put forward as damaging the credibility of the evidence and the genuineness of residence, arises from the couple's so-called 'civil partnership' and 'civil partnership certificate'. It was the appellant who appears to have initially used the term, which was then repeated by the First-tier Tribunal and in cross-examination on behalf of the respondent before me. Reference to being civil partners is apt to confuse in this case, as in the United Kingdom this status is very similar to marriage, requiring similar eligibility, a formal ceremony and only being dissoluble by court order. It is clear however, looking at the documentation, that the couple simply registered themselves as unmarried partners – the sort of relationship traditionally and erroneously called 'common-law marriage'. Indeed the document they provided is not a certificate at all, but translated as a "Deed of stable relationship of common-law couple". It is a deed sworn before a Notary Public. As argued by Ms Nwachuku, it does not show that the couple had to persuade or evidence their eligibility for the status to the relevant authorities; they simply had to declare their circumstances. This provides important evidential context, and also means that the appellant cannot claim that the sponsor is his spouse. They must rely on showing that they were in a durable relationship.
12. The issue with the document is that the deed's declaratory recitals in the translation provided with the application include:

II – That both parties have been living together for at least the last two years, as a couple, in a free, public and open manner, having a stable bond with each other, with a relation of affectivity.
13. The deed was executed on or around 10 October 2019, where on their own account the couple had only lived together for around five months. Ms Cobb does not accept that anyone was misled about the length of their cohabitation. She instead says that the translator of the document made a mistake in organising the clauses, and in support has adduced Google Translate's own attempt:

"that the defendants are living together as a couple, in a public and notorious manner, linked in a stable manner, for at least the last two years, with an emotional relationship existing between them"
14. It is, Ms Cobb says, the linking together in a stable manner, that is to say, the relationship, that must have persisted for two years, and the cohabitation must simply be ongoing at the date of execution. I find that she is wrong about that. On the face of both translations, the two year

requirement logically refers to each of the sentence's component clauses, and that interpretation is consistent with the apparent purpose of the deed as enabling a couple to declare and then register their cohabitation as 'common-law' partners - presumably to gain some form of legal protection in case the relationship breaks down. In any event, if Ms Cobb wished to resile from the translation she obtained then she should have gone back to the original translator for clarification or sought a reasoned disagreement from a different translator.

15. When cross-examined on the point, Ms Cobb said that her interpretation was further supported by the lawyer who prepared the deed on their behalf being fully aware of their circumstances, having said nothing about the need to live together for two years, and that so far as she was aware everything she had done was entirely above board. There is, of course, only her word for that, which brings me to the parts of her evidence that depend on the reliability and credibility of her oral evidence.
16. I found Ms Cobb to be an impressive witness. She was capably and comprehensively cross-examined by Ms Nwachuku, and was happy to acknowledge where documents were missing or could have been better explained. Ms Nwachuku suggested that she had only stayed in Tenerife because her flight was cancelled, and that her residence there in 2020 was by force of circumstances arising from the pandemic rather than a plan to live together as a couple. I found Ms Cobb's explanation of her feelings and motivations at the time to be plausible and consistent with the documentation at the time, such as the content of her email correspondence with her employer. Asked why she had only arranged comprehensive health insurance two months after landing, she described, with evident self-restraint, her frustration at how quickly she was able to obtain commercial and government services in Tenerife, for both pandemic-related reasons and what she termed as excessive bureaucracy.
17. Ms Cobb further described the requirements for obtaining a residence card as a self-sufficient person, which were health insurance, proof of renting a property with the appellant, and bank statements showing a balance of no less than €6,000. I see no reason to doubt this, and do not consider her to have been under any formal obligation to obtain evidence of Spanish law and practice. It is enough to observe that the issue of a residence card appears to have been consistent with her circumstances.
18. No doubt recognising the cogency and consistency of Ms Cobb's evidence, in her closing submissions Ms Nwachuku did not go so far as to say that Ms Cobb had sought to be dishonest, rather that the reliability of her evidence was undermined by the adverse points identified. Standing back and looking at the evidence as a whole, I find Ms Cobb's account plausible, consistent and sufficiently evidenced by, and consistent with, the relevant documents. The principal point of concern has been the two-year cohabitation requirement. I find that this was a requirement for signing the cohabitation deed, but that Ms Cobb breached it unwittingly; this has no legal consequences. Ms Cobb's actual relationship and

circumstances were as she described them, including on 31 December 2020, and I accept her account.

## Conclusions

19. I turn to the issues, without repeating the legal principles set out above or my assessment of the evidence. The first is relationship. There is no written definition of durable relationship in the regulations or in European law. The respondent's guidance suggests that two years' cohabitation should ordinarily be required, but it has always been recognised that other evidence may establish the requisite durability. The Supreme Court of Ireland recently addressed the issue in *Pervaiz v Minister for Justice & Equality and others* [2020] IESC 27. Addressing whether the equivalent 2015 Irish regulations accurately transpose the provisions of the Citizens Directive, it was held that:

72. The word "partner" is frequently used in modern parlance. It has, in fact, for most people, replaced the now somewhat archaic language of "girlfriend" or "boyfriend", words more frequently used by young people, and certainly almost never by more mature adults. Sometimes indeed, the word is used in juxtaposition to the word "boyfriend" or "girlfriend" to identify a degree of permanence or constancy in the relationship.
73. The partner must be someone with whom the Union citizen has a durable relationship. "Durable" does not mean "permanent", and a test that required permanence in that sense would be an impossible burdensome hurdle, and would not be in accordance with any modern understanding of intimate relationships. What is meant, it seems to me, is that the relationship be one which has continued for some time and to which the parties are committed, with an intent that the commitment continues, one, therefore, which carries the indicia of commitment such that, at the present time, each of the parties to the partnership would express a view and a hope that the relationship will continue for the foreseeable future.
74. Thus, a durable partnership will tend to be one of some duration, but that is not to say that the duration of the relationship is, in itself, a defining feature. The length of a relationship will be an important, and sometimes compelling, index of the degree of commitment between the couple, but it is perfectly possible for a committed long-term, what is often called a "serious" relationship, to exist between persons who have known one and other for a short time. Indeed, that profile, while it is not common, is found in persons who marry after a short relationship, and the duration of the relationship is not, therefore, always a useful indicator of its durability.
75. Duration, therefore, is an important factor, but not always an essential one. Durability is not measured only, or even always, by duration, but a durable relationship is often one which has endured, such that the duration may illustrate its durability.

76. Durability connotes a relationship which carries indicia of permanence and commitment such that the couple live a life where each of them is connected to the other by a number of identifiable threads, such as their social life and social network, their financial interconnectedness or interdependence, their living arrangements, and the extent to which they are recognised and acknowledged by their family circle and their friends as a couple.
77. While all of the elements of a durable partnership might not be easy to list, it is probably true to say that most persons would be aware when their friends, acquaintances, or family members are in a durable partnership. For that reason, it seems to me that the language of the 2015 Regulations can readily be understood in its plain terms as connoting a committed personal interconnectedness which is recognised and recognisable between the couple and by the members of their circle or broader acquaintances, whether social or business, and which is anticipated as being likely to continue for the foreseeable future.
20. This analysis has persuasive, albeit not binding, authority, and in any event I agree with it. Duration will obviously be a marker of durability, and I am mindful that at 31 December 2020 the couple had only lived together for just less than 8 months. The relationship itself had nonetheless lasted for over two years, and the other 'indicia of commitment' are, I find, abundant. Viewed at the relevant date, this was a relationship that was akin to marriage in all its aspects, and cohabitation had proved a great success. Ms Cobb and the appellant were, as is clear from the evidence, fully committed to a successful relationship and those who knew them would have no reason to think that it would not endure. I find that they were in a durable relationship for the purposes of the 2016 regulations.
21. I further find that Ms Cobb's residence was genuine and effective. Without repeating the above evidence, and performing the qualitative assessment required, it is clear that at all material times Ms Cobb genuinely intended to reside in Tenerife with the appellant as his durable partner and to exercise her free movement rights in doing so. That intention was successfully realised and their family life strengthened as a result.
22. That disposes of the issues raised by the respondent, and the appellant meets the relevant requirements of regulation 9 (as saved). The respondent's decision was contrary to the EU ground and the appeal must be allowed.

### **Notice of Decision**

- (i) The decision of the First-tier Tribunal contains an error of law and is set aside.
- (ii) The Upper Tribunal re-makes the decision by allowing the appellant's appeal.

*J Neville*

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

13 November 2024