Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-001937
[EA/12167/2021]

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Monday 22 August 2022	**On Tuesday 4 October 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

ENTRY CLEARANCE OFFICER

Appellant

-and-

MR RASHEEN HASAN MOHAMED HAMSIN

Respondent

Representation:
For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent: Mr M Aslam, Counsel instructed by Chancery Solicitors

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Cameron promulgated on 14 March 2022 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 20 July 2021, refusing the Appellant's application under the EU Settlement Scheme ("EUSS") to enter the UK as the durable partner of Ms Fathima Saffna Buhari ("the Sponsor"). The Sponsor is a Dutch national.

2. The Appellant met the Sponsor in October 2019 whilst she was on holiday in Sri Lanka. He married the Sponsor in a proxy marriage in Sri Lanka on 14 February 2021. Their marriage was due to take place in Sri Lanka (in person) in June 2020 but had to be cancelled due to the Covid-19 pandemic. A wedding in person rearranged in January 2021 also had to be cancelled for the same reasons. Thereafter, they entered into the proxy marriage. They celebrated their wedding in person in Sri Lanka in November 2021.

3. The issue before Judge Cameron was whether the Appellant qualified under the EUSS as a durable partner on the "specified date" (31 December 2020). The Judge concluded that the Appellant satisfied the definition of a durable partner (under Appendix EU (Family Permit) to the Immigration Rules – "Appendix EU (FP)") at that date and therefore allowed the appeal.

4. The Respondent appeals on the basis that the Appellant could not have met the definition of a durable partner under Appendix EU (FM). I will come to the detail of the grounds below.

5. Permission to appeal was granted by First-tier Tribunal Judge Athwal on 25 April 2022 in the following terms so far as relevant:

> "… 2. The grounds assert that the Judge erred in finding that the Appellant satisfies the definition of 'durable partner' contained with [sic] Appendix EU (Family Permit). The Appellant stated that his relationship began on October 2019 and therefore as of 31 December 2020 the relationship had not been in duration for at least two years. Further the couple had not resided together at any point prior to their marriage on 14 February 2021.
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> 3. It is arguable that the Judge has materially erred in finding that the Appellant satisfies the definition of a family member of a relevant EU national as defined in paragraph (a)(i)(bb) of annex 1 of Appendix EU (Family Permit) of the Immigration Rules."

6. The matter comes before me to determine whether the Decision contains an error of law. If I conclude that it does, I must then decide whether the error should lead to a setting aside of the Decision and, if I set it aside, I must either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

7. I had before me a core bundle of documents relevant to this appeal, the Respondent's bundle before the First-tier Tribunal and the Appellant's bundle before the First-tier Tribunal. After hearing submissions from Ms Ahmed and Mr Aslam, I concluded that the Respondent had not established that the Decision contains an error of law. I indicated that I would provide my decision in writing which I now turn to do.

DISCUSSION

8. It was common ground before me that the issue turns on the definition of "durable partner" as set out in Annex 1 to Appendix EU (FP) which reads as follows (so far as relevant):

> "(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)…"

9. It is also common ground that the Appellant and Sponsor could not show that they had lived together in a relationship akin to marriage or civil partnership for at least two years. The relationship began only in October 2019. They have never lived together. The Respondent points out in her grounds that the definition has to be met at the specified date which is 31 December 2020 and not by date of application. In this case, even at date of application, the relationship had lasted for less than two years. It was subsisting at the "specified date" for only just over one year.

10. The only issue which remains therefore is whether there was "other significant evidence of the durable relationship". The Respondent's position is that "there is nothing referred to by the FTTJ that would amount to 'significant evidence' of the appellant's 'durable relationship' prior to his proxy marriage".

11. The Judge's findings concerning this issue are at [20] to [27] of the Decision as follows:

> "20. It is clear from the above that the definition goes on to state 'unless there is other significant evidence of the durable relationship.
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> 21. I have an opportunity to hear oral evidence from the sponsor. Although she simply adopted her statement and was not cross-examined, I have a detailed witness statement provided from her.
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> 22. I have also been provided with evidence of the proxy marriage and I have no reason to doubt the sponsor's evidence that they had sought to marry prior to the relevant date but due to the pandemic were unable to do so. The sponsor has provided a copy of the ticket which she booked for the wedding prior to the relevant date which had to be cancelled and there is also evidence of the venue being booked.
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> 23. I have therefore been provided with evidence that the appellant and sponsor had intended to marry prior to the pandemic and that because of the ongoing pandemic they eventually married via proxy. Once the sponsor was able, she then flew to Sri Lanka where they had a wedding reception ceremony in November 2021.
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> 24. I find as a matter of fact that the appellant and his wife commenced their relationship in October 2019 having initially met earlier that month when she went to Sri Lanka on holiday. They kept in daily contact after she returned to the UK and in December 2019 decided that they wished to marry. They booked their marriage and venue for the 4 June 2020 but due

> to the pandemic were unable to marry on that day. Although they rebooked the wedding, they were again prevented by the pandemic from marrying and therefore as already indicated they undertook a proxy wedding on 14 February 2021.
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> 25. I am therefore satisfied on the balance of probabilities that their relationship commenced prior to 31 December 2020 and that they in a relationship [sic] prior to that date. As a result of their continuing relationship, they have subsequently married, and the sponsor was able to visit the appellant in October 2021 after the restrictions were relaxed.
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> 26. Taking account of all the evidence before me I am satisfied on the balance of probabilities that they commenced a relationship in October 2019, and I am satisfied that the relationship has continued since then.
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> 27. I am therefore satisfied on the balance of probabilities that there is significant evidence of the relationship, and I am satisfied on the balance of probabilities that the appellant and his wife meet the requirements to show that they have had a durable relationship existing prior to 31 December 2020."

12. The Respondent sought to rely on the Tribunal's decision in Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC). Although Ms Ahmed did not develop submissions in relation to this case, she was right not to do so. At first blush, the point made in the guidance (that inability to contract a marriage prior to 31 December 2020 due to the pandemic cannot impact on ability to satisfy the EUSS) might appear relevant, I am satisfied that the case is distinguishable. Celik was concerned with an in-country application. As such, the main issue was the appellant's inability to show that his residence had been facilitated prior to the specified date. That is not relevant in an entry clearance case such as this appeal. Second, the issue and therefore the guidance turned on the applicability of the Withdrawal Agreement between the UK and EU and not on the definition of durable partner within Annex 1 to Appendix EU (FP).

13. Ms Ahmed suggested that the requirement for other significant evidence of the durability of the relationship might not be in the alternative. This was she said open to interpretation. I did not entirely understand this submission. The requirement is prefaced by the word "unless" which indicates that an applicant is not required to satisfy also the requirement as to duration.

14. Ms Ahmed also submitted that the Judge has not given adequate reasons for his conclusion. That is not pleaded. However, I permitted her to develop the submission. Having taken into account her submissions in this regard, I am satisfied that it is not made out as a ground.

15. The Judge found, in essence, that the durability of the relationship was satisfied by the fact that the parties had intended to marry shortly after they met. The evidence showed that they had firm and definite plans to do so before the pandemic struck and interfered with those plans. The effect of the marriage was that they intended to commit to each other permanently. Having had their plans scuppered not once but twice, they persisted in their

intention to marry and did so first by way of a proxy marriage which they then celebrated in Sri Lanka once the pandemic allowed. It could not be said that the Respondent has not understood those reasons. They are obvious from what is said. There is no inadequacy of reasons and, as I have already said, that was not the way in which the Respondent pleaded her challenge to the Decision in any event.

16. I accept that the conclusion which this Judge reached might have been generous. It is not however perverse. More importantly, the Respondent does not say that it is.

17. As this Tribunal has pointed out recently in Joseph (permission to appeal requirements) [2022] UKUT 00218 (IAC), a person challenging a First-tier Tribunal decision is required to show that the decision contains an error of law and that Judges "should resist attempts by appellants to dress up or re-package disagreements of fact as errors of law". The basis of the Respondent's challenge in this case is fundamentally one based on a disagreement with the conclusion drawn by the Judge on the facts as he found them to be. It does not disclose any error of law made by the Judge.

CONCLUSION

18. For the foregoing reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellant's appeal remains allowed.

DECISION

The Decision of First-tier Tribunal Judge Cameron promulgated on 14 March 2022 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains allowed.

Signed: L K Smith

Upper Tribunal Judge Smith Dated: 24 August 2022