



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/00216/2020
[EA/50007/2020]

THE IMMIGRATION ACTS

**Heard at Field House
On 11th January 2022**

**Decision & Reasons Promulgated
On 26th January 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**WAQAS JAHANGIR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, of Counsel, instructed by Law Lane Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born on 25th September 1991. He arrived in the UK on 7th July 2012 as a Tier 4 student migrant. He had leave in this capacity until 7th February 2015. He then overstayed. He was arrested as an overstayer on 2nd May 2017.

2. On 8th August 2017 the appellant both claimed asylum and submitted an application for a residence card as an extended family member, namely the durable partner of Ms Francelyse Daniella Londiniere a citizen of France. On 9th August 2017 the applicant was unlawfully removed to Pakistan, and arrangements were then made for his return which resulted in his coming back to the UK on 18th September 2017.
3. On 20th September 2017 the appellant applied again for a residence card as an extended family member, this application was rejected and he reapplied on 8th November 2017. The 8th November 2017 application was refused without a right of appeal, and so solicitors for the appellant threatened an application for judicial review in a pre-action protocol letter. Judicial review proceedings were commenced on the part of the appellant on 20th April 2018, and on 17th June 2020 the appellant received a new decision on the application refusing his application as an extended family member but this time providing for a right of appeal. His appeal against the decision of 17th June 2020 was found to be invalid on the basis that there was insufficient evidence that the appellant was in a durable relationship with an EEA national by First-tier Tribunal Judge Russell in a determination promulgated on the 3rd May 2021.
4. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 31st August 2021 on the basis that it was arguable that the First-tier judge had erred in law in failing to put a number of matters found against the appellant when finding he was not in a durable relationship to the sponsor, and in finding that the relationship was one of convenience when this was not a contention of the respondent. All grounds were permitted to be argued, but the appellant was put on notice that it would be necessary to show that any errors of law were ultimately material.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such errors were material and thus whether the appeal needed to be remade.

Submissions – Error of Law

6. In the grounds of appeal and oral submissions from Mr Gajjar it is argued, in short summary, for the appellant as follows. Firstly, that the First-tier Tribunal erred in law by reason of being procedurally unfair and ultra vires by starting, at paragraph 54 of the decision, from the contention that the respondent did not find that the appellant was in a relationship with Ms Londiniere when the proper starting point was that the respondent did not find that the appellant had submitted adequate evidence that he was in a durable relationship with his partner. If the First-tier Tribunal intended to start from this proposition then the appellant had the right to be put on notice of this fact. It is secondly argued that weight was placed on immaterial factors at paragraph 51 of the decision. It is argued that it is held against the appellant that his

partner claims a 25% reduction on her council tax bill as a student when she has said that she is a worker in her application for permanent residence made in 2018, when her studies are not material and she may have been both a worker and a student. This was a immaterial factor. Thirdly, it is argued, that it was procedurally unfair not to have put to witnesses that the partner was claiming benefits as a lone parent and about her being a student/worker when these matters had not previously been raised as relevant, applying AM (fair hearing) Sudan [2015] UKUT 00656. Mr Gajjar argued that if the immaterial factors relating to the appellant's partner's status as a worker/student and her benefits claims as a student gaining a 25% discount on her council tax and as a lone parent were removed from the decision that it could not be said with certainty that the appeal would have been unsuccessful because all of the evidence had to be considered holistically.

7. In oral submission for the respondent by Mr Lindsay it is argued in short summary as follows. He accepts that it was an error of law for the First-tier Tribunal to have said that the appellant was in a relationship of convenience at paragraph 58, but argues that this finding does not however affect the legality of the findings with respect to whether the appellant and his partner were in a durable relationship. He also accepts the matters at paragraph 51 of the decision (the issue of 25% discount on the appellant's partner's council tax bill, her benefits claim as a lone parent and whether the appellant's partner is a student or a worker) were not relevant to the question in the appeal. However he argued that the matters in paragraph 51 were simply consideration and discussion of the evidence, and not actual findings, so ultimately they were not weighed in the balance by the First-tier Tribunal in concluding that the appellant and his partner had not shown they were in a durable relationship. The reasoning relating to this matter was at paragraphs 54 and 57 in particular. These findings are not challenged in the grounds and so any errors in the decision are not material. Further even if, in the alternative, the conclusions at paragraph 51 were considered findings, and thus were findings containing errors of law, the outcome of the appeal could not be different if they were removed given the force of the findings in paragraphs 54 to 57 of the decision.
8. At the end of the hearing I informed the parties that I found that there was no material error of law in the decision of the First-tier Tribunal but did not give an oral judgement. I set out my reasons for my decision below.

Conclusions - Error of Law

9. It was not procedurally fair for the First-tier Tribunal to have gone on from a finding that there was no durable relationship to find that the relationship was one of convenience at paragraph 58 of the decision without the appellant having any opportunity to understand that this was an issue in the appeal, it not having been raised by the respondent. However this was not the issue being resolved in the appeal and was

not material to the unsuccessful outcome for the appellant as that came about because it was found that he had not shown he was in a durable relationship with his partner.

10. The First-tier Tribunal ought ideally to have made it clear at the start of the findings section of the decision at paragraph 49 that the issue in the appeal was not whether the appellant was in a relationship of some nature with Ms Londiniere but whether that relationship was a durable one. However, from the paragraphs 33 to 44, immediately prior to the findings section it is clear that the First-tier Tribunal understood that the issue was whether the appellant and his partner were in a durable relationship akin to marriage. I therefore do not find any material error in this respect.
11. I now turn to whether the decision that this test was not met was reached relying on irrelevant material or in a way which was procedurally unfair at paragraph 51 of the decision. I find that whether the appellant's partner is a student or a worker (and accept that she could have been both), and the fact that she has said she is a student and lone parent in relationship to benefits claims, and a worker in relation to a claim to the respondent is not relevant, without further explanation, to the issue of whether the appellant and his partner are in a durable relationship. Mr Lindsay argues that this was simply discussion of evidence and not findings on the issue of the durable relationship. However paragraph 51 comes under the heading "Findings" which is placed before paragraph 49 and so I find that rationally what is said must be seen as factors that were placed in the balance when concluding, based on a holistic consideration of the evidence, that there was no durable relationship. As such I do find that the First-tier Tribunal erred in law by placing immaterial matters in the balance when determining this issue.
12. I am not persuaded however that this was a material error of law. This is because the other findings on the issue of there being no durable relationship were so overwhelming that placing these immaterial matters in the balance could not, I find, have affected the outcome of the appeal. There is clear and detailed reasoning at paragraphs 50 to 53 that there is insufficient documentary evidence to show the claimed cohabitation since 2014: there is an unexplained prescription for the appellant giving him a different address in 2017; and the only evidence of the appellant living at his claimed partner's address is a single letter dated 2020 from a GP and a credit card statement from December 2017. The First-tier Tribunal Judge then turns to the lack of evidence of the substance of the relationship between the appellant and his contended partner: at paragraph 54 it is said: "the Appellant's witness statement does not describe his relationship with Ms Londiniere in any detail at all, the reasons why they are together, the challenges they face and what their plans for the future are. There is nothing even as banal as where they shop, what they eat, what they watch on television or any shared interests." The judge concludes that there is no evidence

to support the contention, made by the appellant's solicitors, that their lives are "interwoven". At paragraph 55 it is concluded that Ms Londiniere's letter likewise contains no such information going to the substance of the relationship. Further, it is found, the only photographs submitted appear to be from a single day; and there is no evidence of any type about the claimed "family unit" relationship with Ms Londiniere's children.

13. I conclude there that the decision, as set out at paragraph 58 of the decision, that the appellant is not in a durable relationship with Ms Londiniere, is so strongly reasoned that when the irrelevant material concerning Ms Londiniere's uncertain status as a worker or student and her lone parent benefit's claim is removed from the consideration the outcome based on the unchallenged other findings is inevitably the same. As such I find that the decision of the First-tier Tribunal is not infected by any material errors of law.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
2. I uphold the decision of the First-tier Tribunal that the appeal was invalid on the basis that there was insufficient evidence that the appellant was in a durable relationship with an EEA national.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 11th January 2022