



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

Appeal Number: EA/50346/2021  
UI-2022-001697; IA/04393/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 August 2022**

**Decision & Reasons Promulgated  
On 10<sup>th</sup> October 2022**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**SACHIN KULKARNI**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Hopkin, Sky Solicitors

For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India born on 25 November 1989. He appeals against the decision of First-tier Tribunal Judge S J Clarke dated 13 March 2022 dismissing his appeal against the refusal of a residence card as confirmation of a right of residence under the Immigration (EEA) Regulations 2016.
2. The appellant entered the UK as a student in 2008 valid until 31 October 2011. He applied for a residence card as an unmarried partner in 2017 which was refused. On 31 December 2020, the appellant applied for a residence card as the durable partner of Vanessa Lopez ('the sponsor'), an

EEA national exercising Treaty rights in the UK. The respondent refused his application on 13 February 2021 and his appeal was dismissed following a hearing on 2 March 2022.

3. Permission to appeal was granted by First-tier Tribunal Judge Elliot on 14 April 2022 for the following reasons:

“2. The grounds assert that the Judge erred in failing to give adequate reasons for findings on material matters and committing procedural irregularity capable of making a material difference to the fairness of the proceedings.

3. Having heard evidence from the appellant and sponsor and his witness, there is no finding by the Judge as to the credibility of their evidence and no adequate reason is given for rejecting the apparently consistent evidence of the appellant and sponsor. Further the Judge appears to have advanced her own theory as to the nature of the relationship on a basis not advanced by either party and without evidential foundation.

4. There is an arguable error of law and permission to appeal is granted on all grounds.”

### **Appellant’s submissions**

4. Mr Hopkin relied on the grounds of appeal and submitted the application was refused because of a lack of evidence of durability of the relationship rather than the nature of the relationship. The refusal letter did not make the point that the appellant and sponsor were flat mates, although this was part of the respondent’s review submitted for the hearing. However, it was clear from all the evidence that the appellant and sponsor were a couple and were intending to get married.

5. Mr Hopkin submitted, the judge had failed to explain why she did not accept the accounts given by the appellant, sponsor and witness. There were no clear credibility findings and the mistake made by the witness was insufficient to undermine the credibility of the appellant and sponsor. The witness was mistaken about when the relationship started but not the nature of the relationship which was consistent with the evidence of the appellant and sponsor. The judge erred in law because there was no clear finding on the nature of the relationship or cohabitation.

### **Respondent’s submissions**

6. Ms Cunha submitted it was clear from the refusal decision of 13 February 2021 that the issue was whether the appellant and sponsor were in a durable relationship. The judge assessed credibility and was entitled to

rely on a lack of evidence. The appellant had failed to submit sufficient evidence to prove his case.

7. Ms Cunha submitted the judge was entitled to attach significant weight to the mistake made by the witness who had known the appellant for ten years. The judge considered the appellant's accommodation and the fact he did not tell his landlord the sponsor was living with him. The judge was entitled to have concerns that the evidence indicated a flat share and she gave adequate reasons for why she did not accept the appellant and sponsor were in a durable relationship. There was insufficient evidence to show that the relationship was more than friends who share a flat.
8. In response, Mr Hopkins submitted the judge was entitled to find the evidence did not come up to proof but there was insufficient reasoning to infer the judge had not accepted the evidence of the appellant and sponsor about the nature of the relationship. The judge did not state that they were not telling the truth. She concentrated on a lack of confirmatory evidence without giving reasons for rejecting the evidence of the appellant and sponsor.

### **Conclusions and reasons**

9. In the reasons for refusal letter dated 13 February 2021, the respondent stated:

"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 claim to have been residing together since October 2018, however:

- The evidence of cohabitation is limited to bank statements in the name of your sponsor and NHS letters and a polling card in your name at the same address.
- There is no evidence of joint finances / commitments / responsibilities.

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

10. It is clear from the refusal letter that the respondent did not accept the appellant and sponsor were in a relationship similar to marriage which has subsisted for at least two years. The respondent's review, dated 6 December 2021, supports this position in identifying the issue on appeal at paragraph 3: "Has the appellant discharged the burden of proving he is in a

durable partner relationship with an EEA national.” The appellant was well aware of the case he had to meet.

11. The judge stated at [6]: “The Appellant was aware from the refusal decision that there was a lack of evidence to place him and the sponsor together in a relationship for two years akin to marriage.” The nature and duration of the relationship was clearly in issue.
12. The appellant was represented at the hearing and the burden was on him to show he had been living with the sponsor as an unmarried/durable partner for two years. The judge was not obliged to put matters to the appellant and there was no procedural impropriety in the judge’s finding that the evidence of cohabitation was consistent with a flat share. The judge’s observation at [12] did not undermine her conclusion that there was insufficient evidence to show the appellant and sponsor were durable partners.
13. The judge’s finding that the appellant had failed to show, on the balance of probabilities, that he had been living with the sponsor in a relationship similar to marriage for two years was open to her on the evidence before her.
14. The judge gave the following reasons for coming to that conclusion at [8] to [14] :
  - (i) The evidence of the appellant’s witness was accepted to be less than reliable because he said the relationship started in 2019 not October 2018. This inconsistency could not be explained by the witness’ old age.
  - (ii) There was a lack of supporting evidence from other friends. It was not plausible all the appellant’s other friends were abroad and there was no reason why this should prevent them from sending letters and/or photographs.
  - (iii) There was no evidence from the appellant’s landlords and the lack of supporting evidence was not adequately explained.
  - (iv) The difficulty in providing evidence was not explained by the appellant losing his right to remain in the UK or the expiry of his passport in 2021.
  - (v) There was limited documentary evidence to show the appellant and sponsor were living together since October 2018. The sponsor only provided bank statements from her savings account from June 2019 and there was no documentary evidence of rental payments. Her wage slips and contract of employment did not give an address. The appellant provided bank statements from 2021 and a rental agreement dated February 2021.
  - (vi) The appellant and sponsor both stated the appellant was living at Burgess Road and in October 2018 the sponsor moved in, initially for a few days because she had accommodation problems, and

then she stayed. The blood donor letters and bank statements were capable of showing the appellant and sponsor lived at the same address, but they did not demonstrate a durable relationship or anything more than a flat share.

(vii) The photographs did not show a relationship beyond friendship and there was no evidence of birthday presents or romantic moments.

(viii) Sharing a dog was insufficient to establish a durable partnership.

15. I am not persuaded the judge's reasoning is inadequate. It is apparent when reading the decision as a whole that the judge considered all the evidence in the round and concluded that the appellant had failed to show his relationship with the sponsor was more than a friendship. It is clear from the reasons above that the judge did not accept the appellant's or sponsor's evidence that they were durable partners.

16. Contrary to the grounds, there was a clear finding on the nature of the relationship and any failure to state that the appellant's or sponsor's account was not credible was immaterial. The judge's findings were sufficiently clear and reasoned to enable the appellant to know why his appeal was dismissed.

17. Accordingly, I conclude there is no material error of law in the decision dated 13 March 2022 and I dismiss the appellant's appeal.

### **Notice of Decision**

**Appeal is dismissed.**

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 5 September 2022

### **TO THE RESPONDENT** **FEE AWARD**

As I have dismissed the appeal, we make no fee award.

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 5 September 2022

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.