



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

Appeal Number: UI-2022-001547
EA/50883/2021; IA/03817/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 15th August 2022**

**Decision & Reasons Promulgated
On 24th November 2022**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

Between

**MR DENIS CALA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Klear, instructed by Briton Solicitors

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 6 January 1996. He appeals against the decision of First-tier Tribunal Judge M. A. Hall ('the judge'), promulgated on 12 January 2022, dismissing his appeal against the refusal of a residence card as confirmation of a right of residence under the Immigration (EEA) Regulations 2016.

The appellant's claim

2. On 31 December 2020, the appellant applied for a residence card as the unmarried partner of Jonida Pepa ('the sponsor'), a citizen of Greece exercising Treaty rights in the UK. The sponsor has pre-settled status in the UK. The issue before the judge was whether the appellant had proved, on a balance of probabilities, a durable relationship with the sponsor.
3. The appellant and sponsor claim they met in Greece. Their parents are friends and the appellant's aunt is married to the sponsor's uncle. They started a serious relationship in 2016 and lived together in an apartment for 12 months in 2018/2019. The appellant worked in different jobs in Greece and the sponsor was studying. The sponsor was Albanian and was waiting for her Greek nationality to be confirmed. She intended to travel to the UK with the appellant where there were more opportunities than in Greece.
4. The appellant travelled to the UK illegally hidden in a lorry arriving in February 2020. He claimed asylum, but later withdrew his claim. The sponsor obtained Greek nationality and travelled to the UK by plane in September 2020. She arrived in Scotland and the appellant met her and, after spending five days in a hotel, they moved to stay with a friend of the appellant's in Birmingham. Subsequently, the sponsor found employment and on 9 October 2020 they rented their first home in Luton. On 14 February 2021, they moved to their present address in Luton.

The judge's findings

5. The judge made the following relevant findings:
 - "27. I find that the appellant has shown a flagrant disregard for the immigration law in this country as is demonstrated by his decision to enter and remain illegally. I find that the appellant decided to travel to the UK illegally, because he believed there are better opportunities in this country than in Albania or Greece. The appellant accepted in his oral evidence, when asked, that he had in fact made an asylum claim in the UK but he subsequently withdrew that claim. The appellant when giving evidence, gave no indication that he had been the subject of persecution before leaving Greece, where he had the right to reside, and he made it clear in his evidence that he thought his economic prospects in the UK would be better in the UK rather than Greece or Albania."
 - "29. I accept that some of the evidence given by the appellant and sponsor is consistent. They were able to say that each had a brother and they were able to name those relatives. They both said that they had lived together apart from their families in Greece for a period of time, in an area of Athens, and they gave similar names for that area. They both said that they have relatives who are married to each other, and both said that the

appellant's twin brother lived with them for a period of time in Greece.”

- “31. I find that there are significant inconsistencies in the evidence given by the appellant and sponsor. Although both said that they live together in Greece for approximately 12 months in 2018/2019 the appellant stated that they stopped living together in October/November 2019. The sponsor said that they stop (sic) living together in June 2019. She was made aware that the appellant had said October/November 2019 but maintained her evidence that it was June 2019.
32. In relation to their claimed cohabitation in Greece the sponsor said that the appellant paid the rent on the property in which they lived. This conflicted with the appellant's evidence that he lived in the property without having to pay any rent. This discrepancy was put to the sponsor who maintained her evidence that the appellant had paid the rent on the property while they lived there. There was no evidence, other than the assertions by the appellant and sponsor, to prove that they had lived together in Greece.
33. Inconsistent evidence was given in relation to the first property the couple claimed to have rented in the UK. The appellant claimed that the rent was £850 per month and it was paid cash in hand. It was pointed out that the tenancy agreement stated the rent was £800 per month, and the appellant simply stated that he paid £850 each month. He said that the deposit for this property was paid by his friend.
34. The sponsor said that the rent for this property was £700 ‘or something’ a month, therefore giving a different figure to that quoted by the appellant, and a different figure to what was stated in the tenancy agreement. The sponsor said that she paid the rent because she was working at the time and she paid the deposit which was equivalent to one month's rent. This clearly conflicted with the appellant's evidence on this subject.
35. The appellant said that his parents had given the sponsor money to bring with her to the UK and this amounted to €1000. The sponsor gave a different account stating that she brought €4000 with her to the UK which had been given to her by her parents. She was asked if the appellant's parents had given her money when she came to the UK and she said no. She said that they sent money later and that they received money from family in Greece via friends who travelled between Greece and the UK.
36. I accept that the appellant has provided some photographs of himself and the sponsor together and have taken those photographs into account when assessing the evidence in the round. The appellant and sponsor both said that they have friends in the UK and the appellant said that the sponsor spends a lot of time with her friends. Both said that the friends were aware of their relationship.
37. I find it significant that there are no letters, or witness statements from any friends or any family members to confirm that the appellant and sponsor are in a genuine and durable relationship. Both the appellant and sponsor said that they are in regular and

frequent contact with their family. No witnesses were called at the hearing, other than the appellant and sponsor, to confirm the genuineness of the relationship. It is of course not a requirement that there should be any evidence to corroborate what the appellant and sponsor are saying. However, the appellant was put on notice in the refusal decision that it was not accepted that he and the sponsor are in a durable relationship. It was therefore open to him to produce evidence to demonstrate that he is in a durable relationship. It was open to him to obtain statements or letters from family members, or friends who had travelled between Greece and the UK bringing money from family in Greece, or from friends in the UK who know the appellant and sponsor.

38. I do not find the claim made by the appellant and sponsor to be in a durable relationship to be credible. I find that inconsistencies in the evidence are significant, and I find it significant that there is no supporting evidence from any family or friends, and it is significant that there is no relevant evidence to prove that the couple were in a relationship in Greece. I do not find that they were in a genuine relationship before coming to the UK and I do not find that they are in a genuine and durable relationship in the UK for the reasons given above.”

Grounds of appeal

6. The grounds submit the judge failed to give reasons for his assessment of the evidence and the weight he attached to the documentary evidence of cohabitation. The judge failed to make any reference to the four attempts to marry and made no finding in respect of the voluminous number of photographs produced in the bundle and referred to in oral evidence.
7. At [9] and [10] the grounds submit the judge failed to take into account the consistent evidence given by the appellant and the sponsor, namely:
- (i) they knew each other before they entered into a relationship;
 - (ii) they have been in a relationship since 2016;
 - (iii) the appellant’s aunt is married to the sponsor’s uncle;
 - (iv) they lived together in a suburb called Perera in Greece prior coming to the UK;
 - (v) the number of bedrooms in the apartment in Greece;
 - (vi) the names of their respective family members;
 - (vii) the appellant’s brother lived with them in Greece for a short period of time;
 - (viii) when the sponsor arrived in the UK, they stayed together at a hotel in Scotland, then with the appellant’s friends until eventually finding their own accommodation;
 - (ix) the names of friends who knew them in Greece and the UK;

- (x) the appellant and sponsor live together;
 - (xi) the dates and addresses where they have lived in the UK;
 - (xii) the sponsor pays the household bills in the UK;
 - (xiii) the photographs contained within the appellant's bundle;
 - (xiv) the dog in the photographs as evidence of a shared commitment demonstrating the relationship had acquired the characteristics of permanence and durability.
8. Permission to appeal was granted by First-tier Tribunal L. C. Connal on 28 February 2022 on the following grounds:

"It is arguable that in setting out his findings at [25] to [38], the Judge did not provide adequate reasons for those findings including in relation to the weight given to the documentary evidence regarding prior co-habitation, the stated repeated notices of intention to marry given to the registrar, and the photographs of the appellant and the sponsor."

Submissions

9. Mr Klear relied on the grounds of appeal and submitted the judge's assessment of the evidence was inadequate because he failed to consider relevant material evidence. Mr Klear submitted the judge failed to take into account the consistent evidence set out at [9] of the grounds of appeal. The appellant and sponsor were asked over 100 questions and had given significant detail in cross-examination. The judge took issue with the answers given to four questions with no mention of the large body of consistent evidence including where they lived together in Greece, that the appellant's brother lived with them for a short time, when the sponsor arrived in the UK, where they stayed in Scotland and the dates and addresses in the UK.
10. Mr Klear submitted most of the evidence was consistent and the judge failed to consider the four attempts to marry, the photographs and the dog which was given to the appellant by the sponsor's parents as a puppy. In response to a question from the panel, Mr Klear submitted the judge failed to make specific findings of fact or to state whether he rejected or accepted the evidence.
11. Ms Ahmed relied on the Rule 24 response and submitted the judge considered all the evidence and his findings were adequate. He found the parties lived together, but did not find the evidence of a durable relationship to be credible. There were significant inconsistencies in the oral evidence and it was clear these outweighed the consistent evidence.
12. The judge considered the matters referred to in the grounds and gave adequate reasons for his findings. The judge dismissed the appeal because there were significant inconsistencies in the appellant's and sponsor's

evidence and a significant lack of evidence which the appellant ought to have been able to produce. There was no evidence from family or friends.

13. In answer to questions from the panel, Ms Ahmed submitted the judge took into account the four attempts to marry and failure to make a specific finding on this evidence was immaterial. The judge considered all the evidence in a balanced way and had adequately demonstrated why he came to his overall conclusion. He made clear findings on the glaring inconsistencies which were sufficient to outweigh the consistent evidence.
14. Mr Klear submitted the judge recited the evidence in the bundles but failed to make findings of fact. There were no findings on when and where the appellant and sponsor lived. There were 50 pages of photographs, four attempts to marry, tenancy agreements and council tax bills. The judge had failed to properly evaluate the evidence or to give adequate reasons for his conclusions. The appeal should be remitted for rehearing.

Conclusions and reasons

15. We are not persuaded the judge failed to take into account material evidence for the following reasons. The judge referred to the family history, the apartment the appellant and sponsor shared in Greece and their intention to marry in his summary of the appellant's case at [3] and [4]. He again referred to their parents' friendship and their in-laws at [15] and considered the evidence of the sponsor's arrival in Scotland and where they lived in the UK at [17] and [18]. The four attempts to marry are specifically referred to at [23] where the judge stated:

"I was asked to find that any inconsistencies in their evidence could be regarded as minor and they had made four attempts to give notice of intention to marry but had been prevented from doing so by the Covid pandemic. I was asked to accept the evidence given by the appellant and sponsor that they had been in a relationship since 2016, their relationship was genuine and they intended to marry."

16. At [25] the judge stated he had considered all the documentary evidence and oral evidence in the round together with the submissions. At [29] the judge found that the appellant's and sponsor's accounts were consistent in a number of respects and he took into account this consistent evidence in coming to his overall conclusion. We find the judge considered and referred to all the matters listed at [9] of the grounds of appeal. The judge's failure to mention the photographs of the dog was not material given the judge's finding at [36] that he took into account the photographs when assessing the evidence in the round.
17. We find the judge gave adequate reasons for why he found the appellant's and sponsor's evidence was inconsistent in four material respects. He took into account the appellant's disregard for UK immigration law and the time

of the appellant's and sponsor's entry to the UK in finding the appellant and sponsor were not credible.

18. The judge took into account the tenancy agreements and council tax bills and noted the respondent accepted the appellant and sponsor lived together in the UK at [8]. It was the appellant's case that they started living together in the UK in October 2020. There was no documentary evidence that the appellant and sponsor lived together in Greece and there was very little evidence that their relationship was one akin to marriage save for their assertions in oral evidence.
19. On reading the decision as a whole, we are satisfied the judge took into account the family history at [3],[15],[22] and [29], the four attempts to marry at [18] and [23], the consistent evidence at [29] and the photographs at [36]. The judge gave adequate reasons for why the claim to be in a durable relationship was not credible at [27] and [31] to [35]. The judge was also entitled to take into account a lack of evidence which the appellant ought to have been able to produce if his account was true.
20. We find that the judge's conclusion at [38] was open to him on the evidence before him. The judge heard oral evidence from the appellant and sponsor and considered all the evidence in the round. His reasons adequately support his conclusions.
21. There was no material error of law in the decision of 12 January 2022. We dismiss the appellant's appeal.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 17 October 2022

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed
Upper Tribunal Judge Frances

Date: 17 October 2022

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.