IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000254
First-tier Tribunal No:
EA/05326/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Aristotelis Raptis
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Raptis, litigant in person
For the Respondent: Mr S Walker, Home Office Presenting Officer

Heard at Field House on 20 April 2023

DECISION AND REASONS

1. The appellant appealed against the decision of First-tier Tribunal Judge Eldridge, promulgated on 29th December 2022, who dismissed his appeal against the Secretary of State's decision dated 20th September 2022 refusing the appellant an EUSS family permit.

2. The appellant made an application on 19th November 2021 on the basis he was a family member of a qualifying British citizen, his unmarried partner. The decision of the respondent noted that the appellant must demonstrate his sponsor satisfied the definition of qualifying British citizen and that he was a family member.

3. The Secretary of State considered that the appellant had shown insufficient evidence of British citizen activity in the EEA host country, joint residence in the

EEA host country and genuine residence in the host country and that there was no sufficient evidence that he was a family member or extended family member.

4. The grounds of appeal to the Upper Tribunal were as follows. The judge found that the qualified British citizen Anthony Edward Thomson was in possession of an EHIC card but there was a significant error of law in the way the judge came to his decision and failed to take into account **O and B v Netherlands C456/12** in relation to the centre of life and permanent residence.

5. In the case of **Surinder Singh** the qualified British citizen should not have been expected to transfer his centre of life in Greece or to have acquired permanent residence in the host country or to be domiciled there.

6. All he had to prove was to be treated as an EU citizen with a right of return and that he was exercising treaty rights as a worker, self-employed person or self-sufficient person for at least 90 days before the withdrawal period, whilst residing with his partner, which he had done.

7. The judge disregarded the sponsor's intention to form a civil partnership in the fullness of time with his partner which was stated both in his witness statement and verbally during cross-examination

8. In his application for an EUSS permit on 19th November 2021 the appellant had stated that the date they intended to get their civil partnership was on 24th March 2023, but because of Brexit and the refusal, and legal difficulties and uncertainty, they had not delivered that as of the date of application, but it was always their intention to do that.

9. The judge did not mention anywhere the fact that his partner verbally said in court he had not seen his brother for eight years or his sister for four years because they lived far north; he was in communication with them, but his partner coveted his privacy. He and his partner were now living as partners together in his flat in London.

10. Besides that, the judge readily dismissed the compassionate grounds to be considered owing to the detrimental effects of Covid. The messages between them were private but demonstrated their intimacy and thus their relationship throughout the years.

11. There is documentation of the partner's acquisition of property in Greece in 2004 and they were more vulnerable than most couples and would expect the documentation to be examined thoroughly to show that their relationship had existed at the relevant time.

12. At the hearing before me Mr Raptis, the appellant, attended in person and referred to further paperwork that he had submitted, in particular a witness statement, bank statements and a certified copy of an entry of civil partnership dated 11th April 2023 between the appellant and Mr Thomson. I explained to him that the focus must be on the decision of the First-tier Tribunal at the date it was promulgated on 29th December 2022, and it was important to identify any error of law in that decision. Evidence produced after that decision did not contribute to the undermining of the decision in these circumstances.

13. Mr Raptis submitted that he relied on his written grounds, which I summarised during the course of the hearing and with which he agreed. Mr Raptis also confirmed that he could understand English sufficiently to represent himself and

understand the proceedings as a litigant in person. I emphasised to him that if he had any difficulty in understanding he should say so and should he wish to have anything repeated, he could do so.

14. During the course of the hearing, I referred to the reasons for refusal letter, from the Secretary of State dated 20th September 2022, and which identified that the appellant had made the application on 19th November 2021 for an EU Settlement Scheme family permit under Appendix EU family permit for the Immigration Rules on the basis he was a "family member of a qualifying British citizen". That decision set out that to qualify for an EU Settlement Scheme family permit as a "family member of a qualifying British citizen" you need to show that the British citizen:

- first lived for more than three months in the EEA host country and exercised free movement rights there under EU law as a worker, self-employed person, self-sufficient person or student immediately before returning to the UK; or

- acquired the right of permanent residence under EU law in the EEA host country, generally after five years' continuous residence there as a qualified person, before returning to the UK.

The Secretary of State submitted that the appellant had not provided adequate evidence to show that the British citizen that is Mr Thomson was self-sufficient.

15. The decision also maintained that the appellant had not shown that the British citizen held comprehensive sickness insurance. The decision then went on to state that the appellant had not provided evidence that he had resided with a British citizen in Mykonos between May 2019 and December 2019 but in order to show that the joint residence of the appellant and the British citizen in Greece was genuine, the following factors were taken into account, such as whether the centre of the qualifying British citizen's life transferred to the EEA country, the length of the joint residence, the nature and quality of the appellant's and the qualifying British citizen's accommodation in the country and whether it was the qualifying British citizen's principal residence, and the degree of their and the citizen's integration and whether the first lawful residence with the British citizen was in the EEA country.

16. The decision maintained that the appellant had not provided evidence of this. Further, and this is a critical point, the decision maintained that the appellant had not shown that he had the status of a "family member" or extended family member during all or part of his joint residence with a qualifying British citizen in the host country.

17. The appellant had maintained, said the decision, that he was a durable partner for all or part of his joint residence in Greece, but the decision advanced that the appellant had not provided adequate evidence to confirm this and cited from Appendix EU family permit Annex 1:

> *"durable partner*
>
> *(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); and

(b) where the applicant was resident in the UK and Islands as the durable partner of a relevant EEA citizen before the specified date, the applicant held a relevant document as the durable partner of the relevant EEA citizen or, where there is evidence which satisfies the entry clearance officer that the applicant was otherwise lawfully resident in the UK and Islands for the relevant period before the specified date (or where the applicant is a joining family member) or where the applicant relies on the relevant EEA citizen being a relevant person of Northern Ireland, there is evidence which satisfies the entry clearance officer that the durable partnership was formed and was durable before the specified date; and

(c) it is, or (as the case may be) was, not a durable partnership of convenience; and

(d) neither party has, or (as the case may be) had, another durable partner, a spouse or a civil partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person's relationship with that party."

The decision stated:

"In your application form you state that you have been in a relationship with your sponsor since May 2019 and lived together for six months between May 2019 and December 2019. However, the evidence you have supplied does not confirm that you have been residing with the British citizen in a relationship akin to marriage for at least two years."

18. The decision of the First-tier Tribunal Judge rightly identified at paragraph 11 that the appellant needed to show that "he was at the material time the family member of Mr Thomson and he relies on them being durable partners" [my emphasis]. The judge rightly identified that they needed to show that they had been in a "relationship akin to civil partnership or marriage and durable in nature". The judge also identified that the appellant needed to show that he and the sponsor lived together in Greece and formed or developed a partnership there and that the centre of Mr Thomson's life was there in Greece rather than in the UK and also that he was exercising his treaty rights.

19. In my view, the whole assessment of the sponsor by the First-tier Tribunal judge was in relation to where and when that relationship occurred; the issue of the "centre of the qualifying British citizen's life transferred to the EEA country" was in relation to the assessment of the appellant being a "family member" of a qualifying British citizen, not that the sponsor could not qualify himself because he had not exercised treaty rights. Even if that is incorrect, the judge accepted at [15] that the sponsor gave credible evidence and stated at [16] "my findings about the nature of the sponsor's periods of time in Greece and his residence and domicile being in London are probably enough to dispose of the appeal in itself. I should make findings of fact however about the nature of the relationship".

20. The judge recorded at [16] that although the appellant said that they were partners in the fullest sense from the outset "Mr Thomson is clear that they were not".

21. The judge went on at [17] to reason that Mr Thomson gave evidence that he was, when the appellant moved in shortly after their first meeting on 15 May 2019, there to help out the appellant "with accommodation because the appellant was working locally, and this would save him a considerable cost out of his wages". It was stated in evidence by the sponsor that it was because they got on well and it helped out the appellant financially and critically:

> *"He said he did not then regard him as his partner but they had a nice relationship and things had developed since then. As he put it in answer to a question from Mr Wain 'between May and October 2090[2019] he was a friend more than a partner'. Things, he said, have developed now."*

22. The judge made clear that he preferred Mr Thomson's evidence, he had no incentive to tell anything other than the truth and it was that they merely shared a residence in Mykonos between the latter part of May and the end of September 2019 when the appellant returned to university. This time predates the Covid pandemic. The judge specifically and critically found "I do not find that they lived together as partners in any relationship akin to marriage or civil partnership during any of that period". The judge was aware that they had reformed the relationship and also stated as follows:

> *"21. The relationship between these two people may have changed over time. Initially, in 2019 and thereafter it was one of convenience to the Appellant in particular but also perhaps they were two people who got on quite well sharing a property. Thereafter they were still in touch and saw each other relatively briefly in the United Kingdom and then in Mykonos in April 2022. They have lived in the same premises since June 2022 – thus for about the last six months.*
>
> *22. The Appellant is adamant that they have been partners from the outset. I do not accept that. In any event, it is clearly not as Mr Thomson has seen it. He is hoping that their relationship will continue to develop into a long-standing one as partners. That may or may not be the case that, on the facts as I have found them, they have not demonstrated a durable partnership over time. Rather, theirs is one that is still working its way out and it would appear that these two people concerned see the relationship somewhat differently. For instance, the Appellant has stated an intention to marry in Kensington and Chelsea in the spring of 2023 but that was not something volunteered by Mr Thomson. Rather, in the context of taking things further with any of his family, he didn't want to risk these things."*

23. The judge was clear that he did not accept, despite the appellants being adamant that they had been partners from the outset that that was in fact the case. The judge found that their relationship was "one that is still working its way out".

24. The judge added "For instance, the Appellant has stated an intention to marry in Kensington and Chelsea in the spring of 2023 but that was not something volunteered by Mr Thomson."

25. I find that the decision overall was geared towards to assessment of the relationship at the relevant time, not the status of Mr Thomson as a British citizen operating abroad exercising Treaty rights. It is important at this juncture to note the definition of family member at Appendix 1 of EU family permit (insofar as material) and the definition of specified date and of withdrawal:

> *"date and time of withdrawal : 2300 GMT on 31 January 2020"*
> *"specified date : 2300 GMT on 31st December 2020"*
>
> *"family member of a qualifying British citizen*
>
> *a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that:*
>
> *(a) they will be returning to the UK:*
>
> *(i) before 2300 GMT on 29 March 2022 (or later where the entry clearance officer is satisfied that there are reasonable grounds for the person's failure to meet that deadline), as the spouse or civil partner of a qualifying British citizen,* ***and****:*
>
> *(aa)*
>
> *(aaa) the marriage was contracted or the civil partnership was formed before the date and time of withdrawal; or*
>
> *(bbb)* ***the applicant was the durable partner of the qualifying British citizen before the date and time of withdrawal*** *(the definition of 'durable partner' in this table being met before then rather than at the date of application) and the partnership remained durable at the date and time of withdrawal; and*
>
> *(bb)*
>
> *(aaa) the marriage or civil partnership continues to exist at the date of application; or*
>
> *(bbb) the entry clearance officer is satisfied that the marriage will be contracted or the civil partnership will be formed before the couple return to the UK; or*
>
> *(ii) (where sub-paragraph (a)(i)(aa)(bbb) above does not apply) as the spouse or civil partner of a qualifying British citizen, and:*
>
> *(aa) the marriage was contracted or* ***the civil partnership was formed after the date and time of withdrawal and before the specified date****; and*
>
> *(bb) the marriage or civil partnership continues to exist at the date of application; and*
>
> *(cc) the entry clearance officer is satisfied that there are reasonable grounds why they did not return to the UK with the qualifying British citizen before the specified date; or*

(iii) before 2300 GMT on 29 March 2022 (or later where the entry clearance officer is satisfied that there are reasonable grounds for the person's failure to meet that deadline), as the durable partner of a qualifying British citizen, and:

(aa) ***the partnership was formed and was durable before the date and time of withdrawal;*** *and*

(bb) the partnership remains durable at the date of application; or

(iv) as the durable partner of a qualifying British citizen, and:

(aa) ***the partnership was formed and was durable after the date and time of withdrawal and before the specified date****; and*

(bb) the partnership remains durable at the date of application; and

(cc) the entry clearance officer is satisfied that there are reasonable grounds why they did not return to the UK with the qualifying British citizen before the specified date; or..."

The fact is that at the specified date, which is identified in Appendix 1, the judge had clearly found for sound reasons, not least the evidence of the sponsor, that there was no durable relationship at the relevant time.

26. That is fundamental and any other point taken in relation to whether the sponsor was a qualifying British citizen or not, and the reference to **O and B v Netherlands C456/12** is otiose. The judge properly applied Appendix EU (Family Permit). The judge properly considered matters raised and any compassionate grounds now raised take the case nowhere. That the appellant and his partner now have entered into a relationship in any event post dates the decision under challenge and the onset of Covid post dated the relevant period when the appellant claimed he and his partner lived together in Greece in a durable partnership. The challenge therefore falls away and the decision of the First-tier Tribunal shall stand.

Notice

The decision of the First-tier Tribunal will stand, and the appellant's appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th May 2023