



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/03510/2021

UI-2021-001168

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 1 September 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ABID ULLAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Young, Senior Home Office Presenting Officer

For the Respondent: Mr Rashid

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 1 April 1989 and is a male citizen of Pakistan. The appellant had applied for leave to remain in the United Kingdom on the basis of family life with his partner, Hira Sana Alam, a British citizen (the sponsor). The Secretary of State refused the application and the

appellant appealed to the First-tier Tribunal, which in a decision promulgated on 29 October 2021, allowed the appeal. the Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The First-tier Tribunal found as follows:

8. The Respondent had accepted that the Appellant and Sponsor's relationship was genuine and subsisting at the time of the refusal. I am satisfied that it continued to be and I take into account the fact that both the Appellant and Sponsor attended the hearing before me and gave evidence of their continued relationship.

9. The Respondent did not challenge that the Appellant and Sponsor had been living together since August 2019. I am satisfied that they have lived together since then and take into account their consistent evidence, which has been supported by documentation, such as bills dating back from September 2019 and a tenancy agreement. I accept that they still live together, as evidence by their own account to me and the fact that they have provided supportive documentation dated 2021.

10. The only requirement of the Immigration Rules that was contested was the relationship requirement, namely satisfaction of the definition for "partner". Having found as a fact that the Appellant and Sponsor are in a genuine and subsisting relationship, and having found as a fact that **they have now lived together for over two years** akin to husband and wife, I am satisfied that the definition of partner is now satisfied. [my emphasis]

The grounds of appeal are brief:

Ground One - making a material misdirection in law on any material matter It is submitted that the First tier Tribunal Judge (FTTJ) has erred in law by allowing this appeal, he has failed to consider the appeal in that the Appellant could not succeed in their application at the date they had submitted nor even at the date of decision, and it appears they have not considered the case on an outside the rules basis as the Appellant could not actually meet the rules [10-11].

Ground Two - Failure to provide reasons/adequate reasons The FTTJ accepts that the Appellant's family disapprove of his religious marriage to his partner [11] although there is no documentary evidence to corroborate this. The standard of proof is the balance of probabilities, not the lower standard as seen in asylum claims and so it cannot be said mere assertion satisfies this, as such it is submitted that the FTTJ has inadequately reasoned his decision on this point.

Ground three - Making a mistake as to a material fact The FTTJ has accepted the Appellant's partner does not speak the same language as him [11] but the Reasons for Refusal Letter dated: 10/06/21 details as follows; It is noted that you communicate with each other in both English and Urdu and as such your partner has knowledge of a language spoken in Pakistan which would also assist in living there. The FTTJ has made a mistake to a material fact and in doing this would allow the Appellant and his partner to relocate and integrate into Pakistan, especially as it has not been proven on the balance that they would be without family/social support. Permission to appeal is respectfully sought.

3. I find that the judge has fallen into error for the reason outlined in Ground 1. The relevant rules are:

GEN.1.2.

For the purposes of this Appendix “partner” means-

- (i) the applicant’s spouse;
- (ii) the applicant’s civil partner;
- (iii) the applicant’s fiancé(e) or proposed civil partner; or
- (iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership **for at least two years prior to the date of application**, unless a different meaning of partner applies elsewhere in this Appendix.

E-LTRP.1.8. If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership, as specified. [my emphasis]

As can be seen from the highlighted passages above in GEN 1.2 and the First-tier Tribunal’s decision, the period of cohabitation ‘in a relationship akin to a marriage or civil partnership’ must be at least two years prior to the date of application and not, as the First-tier Tribunal states, prior to the date of hearing (‘they have *now* lived together...’). The judge has proceeded to allow the appeal having misunderstood the provisions of the Immigration Rules. I agree also with Ms Young’s submission that, although the judge formally allows the appeal on Article 8 ECHR grounds, his analysis of the human rights appeal does not go beyond a simple acknowledgement that the relevant rule has been met. There may be cases where a finding that a rule has been met is effectively determinative of a human rights appeal but that was not obviously the case on the facts here (the respondent’s Ground 2 is correct, in my opinion, to question the judge’s failure to provide adequate reasons). Moreover, it may be a risky strategy; when the rule itself is misunderstood or misapplied, it is inevitable that the decision based on that misunderstanding cannot survive.

4. Ground 3 is also made out but, in itself, does not reveal a material error on the part of the judge. For the reasons given at [3] above, I set aside the decision of the First-tier Tribunal. None of the findings of fact shall stand. There will need to be a fresh fact-finding exercise which is better conducted in the First-tier Tribunal to which the appeal is returned for that Tribunal to remake the decision following a hearing *de novo*. As Ms Young observed, the credibility of the appellant and his partner and the genuineness of their relationship is not in doubt; the appellant could make a fresh application as he now would appear to satisfy the rules. However, that is a matter for the appellant and his advisers.

Notice of Decision

The Secretary of State appeal is allowed. The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is

returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Signed
Date 31 October 2022
Upper Tribunal Judge Lane