

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number:** **PA/11175/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 02 July 2018** | **On 30 July 2018** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**Mr Thien Dong Nguyen**

(anonymity direction not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K I M Manzur-E-Mawla of Counsel, Morgan Hall Solicitors

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

**DECISION AND REASONS**

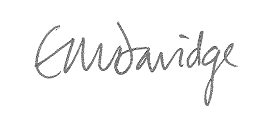
1. The grounds of appeal relied upon at the First-tier related only to family and private life and anonymity was not ordered and I see no reason to make an order now. The Appellant appeals with permission granted in the Upper Tribunal, a decision of the First-tier Tribunal (Judge Cameron) promulgated on 21 Dec 2017, in which the judge dismissed the Appellant’s appeal finding the removal decision does not place the UK in breach of international obligations under article 8 ECHR.
2. The appellant was granted permission to appeal by the Upper Tribunal on 21 March 2018. The substance of the grounds are,
   1. the judge erred in law in failing to make an express finding about how long the appellant has been a relationship with his girl-friend, albeit not one of cohabitation
   2. judge erred in law in failing to make an express finding as to whether or not the appellant and his partner were cohabiting as at the date of hearing
3. By way of background on 03 March 2017 the appellant was detained from reporting for removal. Days later Mac and Co Solicitors wrote to seek his release on temporary admission on the basis that he was applying to remain under the partner route having a British partner of 3 years. On 27th of March 2017 the current representatives wrote to the Home Office seeking to regularise his status by making fresh representations under paragraph 353 of the immigration rules in the context of a 2011 refusal of his international protection claim in which he had become appeal rights exhausted following the dismissal of his appeal. In summary his fresh representations relied on a family life relationship asserting that he had been in a relationship since 2013 and that it had become one of cohabitation in London, since 2014, with the couple moving to live together in Suffolk in 2015. It was said to meet the requirements of being a family relationship deserving of respect in the context of the immigration rules under appendix FM, which requires cohabitation of at least 2 years prior to application. He provided evidence that he in 2017 he had given various 3rd parties such as an electricity supplier, TV licensing, and council tax, his address as the address in Suffolk and that the billing for the address had switched from his girlfriend’s name into his own name. There was a letter from the landlord of the Suffolk property indicating that both the appellant and his partner had lived there since February 2015. The appellant’s ex-partner confirmed that she had moved to Sussex where she had purchased a nail salon and that as a result he looked after the children at the London property, and that the appellant and his ex-partner visited them at the London property every weekend. It was conceded by the appellant that he does not have a parental relationship with the children who are parented by their natural parents and so all the focus was on the relationship with the claimed partner.



1. At the hearing the respondent produced the notes of the appellant’s interview on detention on 3 March 2017 when he said that he had previously lived in Ipswich but now lived in a friend’s house in London and had a non-cohabiting girlfriend here with limited leave. The judge found that the appellant had not established that he had been living with his girlfriend in the Suffolk property and that the evidence was of a girlfriend/boyfriend relationship insufficient to meet the rules or outweigh immigration control in the context of an Article 8 balancing exercise.
2. The appellant accepts that the judge’s decision is not perverse: there was evidence sufficient to justify the judge’s conclusion. The grounds challenge the reasoning, complaining that the judge has made insufficient findings and has done insufficient to explain why the evidence going to cohabitation has been rejected.
3. The grounds fail to appreciate that the judge has adequately explained to the appellant that he lost his case because he had failed to provide any reasonable explanation as to why when he was detained before making this family life claim, he said he was not living with a partner but had a non-cohabiting girlfriend for the last 2 years and was living with a friend at a London address. The explanation offered by the appellant was firstly that the immigration officer had simply written down his previous address rather than his current one and that he had told the officer that he was living with his partner and had been living with her for over 2 years. Faced with the interview record in cross-examination he changed that to say that his poor English meant that he had misunderstood the question and he thought he had been asked about his previous address as opposed to his current address and he wasn’t asked about his current address. Alternatively, that he had given his London address because his application to change his bail address to the Stowmarket address had been refused. The judge found his changing evidence expedient. Further the judge noted that in his interview he said that he had been with his girlfriend for 2 years which would have taken its commencement back to 2015 and yet subsequently he had added to that information to describe a significantly longer relationship going back to 2013 and cohabitation since 2014.
4. It is a nonsense to say that the judge has failed to take into account the witness evidence of the appellant’s friend Mr Trung Le as to the relationship beginning in 2013 becoming one of cohabitation from 2014, with a couple moving to Ipswich in 2015. The judge set it out at [52] marking it as part of the evidence, along with that of the appellant and his partner that led him to identify at [55] that the witness evidence when viewed with the interview record gave rise to a plain contradiction which required resolution. The reasoning that follows between [56] and [67] visits the documentary evidence including (contrary to the grounds) the landlord’s letter confirming that the appellant had lived with his partner at the Suffolk address since 2015 and the letter from the ex, - the father of the children. The judge then reminds himself of the burden standard of proof correctly before moving to find, taking account of the “witnesses” that the appellant has failed to show on balance that he is in a genuine and subsisting cohabitation relationship that has lasted for 2 years. There is no basis upon which to assume as the appellant suggests that the judge’s reference in the plural to the consistent oral evidence of the witnesses, did not encompass the evidence of Mr Trung Le. The judge had conflicting evidence but was entitled to find against the appellant. Neither the landlord nor the ex-partner of the girlfriend attended to give evidence and face cross-examination. None of the documentation is determinative. It is plain that the judge had regard to it when assessing the evidence for and against the appellant because he has expressly referred to it.
5. The grounds assert for example that the judge’s findings are contrary on the one hand the judge accepts that the children of his partner are living with her ex- partner their father at his London address, but rejects the ex-partners evidence that the appellant lives with his ex-in Suffolk returning to the address only at weekends.
6. Contrary to the grounds there is no inconsistency in the judge finding the interview description of the appellant living with a friend more reliable than the account of extended cohabitation with his girlfriend as subsequently given and the evidence that the friend living at the London address is his girlfriend’s ex-partner and father of her children. Similarly, the grounds contending that the judge should have made findings as to where the appellant’s claimed partner or girlfriend was living at various times in light of the documentary evidence that she had lived at the London address fails to recognise that the burden was on the appellant to establish the factual matrix of the family life upon which he relied. It was an account of cohabitation in the context of a relationship akin to marriage. As accepted on behalf of the appellant before me it is only that character and quality of family relationship which engages article 8 family life. The judge has more than adequately explained to the appellant why he has not established that position on the balance of probabilities. The grounds’ complaint that the judge has failed to say whether or not the couple have cohabited since March 2017 fails to recognise that it was not the appellant’s case that he was not cohabiting as at March 2017 but commenced cohabiting since, it was his case that he’d been cohabiting since 2014 between London and Ipswich, no “alternative facts” were argued. The judge has resoundingly rejected that claim.
7. Whilst the judge accepts at [75] that the appellant has a girlfriend/boyfriend relationship now, there is no inconsistency or contradiction between that conclusion and the finding that the appellant has failed to establish that it is a relationship sufficient to engage article 8 or carry significant weight in a proportionality exercise so as to override the public interest requirements set out in section 117B of the NIAA 2002 Act. Given the difficulties identified by the judge going to all of the evidence of its character and quality, as well as the unlawful immigration status of the appellant, on the case presented the appeal was all but hopeless. Similarly, the submission that the judge fell into error by omitting to make an express finding of fact as to when the relationship began fails to appreciate the evidential difficulties and the burden on the appellant.
8. The reasons more than adequately explain to the appellant why he lost.

**Decision**

1. The decision of the First-tier Tribunal dismissing the appeal reveals no error of law and stands.
2. Signed

 Date 23 July 2018

Deputy Upper Tribunal Judge Davidge