IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005110

First-tier Tribunal No: EA/00060/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th May 2024

Before
UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

Mr Kouassi Gael Yeboua
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A. Badar of Counsel, instructed by Sarker Solicitors
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 19 January 2024

DECISION AND REASONS

Introduction and Anonymity

1. We deal first with anonymity. There is no previous anonymity direction, none has been sought and we see no basis upon which an anonymity direction is appropriate in view of the principle of open justice.

2. This is our oral decision, which was delivered at the hearing today.

Procedural History

3. We deal with the procedural history in respect of this matter. The Appellant is a citizen of the Ivory Coast. His appeal against the Respondent's decision dated 13 December 2022 to refuse the Appellant's application pursuant to the European Union Settlement Scheme ("EUSS") was considered on 1 September 2023 at a

remote hearing before First-tier Tribunal Judge Jepson ("the judge"), sitting at the Taylor House Hearing Centre.

4. The Appellant's appeal was dismissed by way of a decision dated 11 September 2023. The Appellant sought permission to appeal, which was granted by a First-tier Tribunal Judge. The basis of the Appellant's application was that his former partner Ms Cherise Langue, a citizen of France, enabled him to succeed under the EUSS. The Appellant states that he married Ms Cherise Langue ("the Sponsor") on 22 March 2011. The Appellant states that he applied for and was granted a residence card as a family member of an EU citizen. The Appellant states that he completed five years of residence as a family member in 2016 but it was only later, on 13 April 2017, that he divorced from the Sponsor. The Respondent's Reasons for Refusal Letter ("RFRL") dated 13 December 2021 had concluded that:

   (i) the Appellant did not meet the requirements for Settled Status, as set out in Immigration Rule EU11;

   (ii) nor did the Appellant meet the requirements for pre-settled status, as set out in Rule 14 of Appendix EU of the Immigration Rules.

5. The Respondent's decision had stated that the Appellant had not provided evidence that he was the spouse of a relevant EEA person. Specifically it was said that the Appellant had not provided the required proof of the Sponsor's identity and nationality in the form of their valid passport or valid nationality identity card, nor was there evidence to show that the Sponsor had been granted indefinite leave to remain pursuant to EU2 or limited leave to enter or remain pursuant to paragraph EU3 of Appendix EU to the Immigration Rules.

6. The Appellant relied on two grounds of appeal. Ground 1 was that the judge had erred in his assessment of the EUSS and ground 2 was that the judge had made irrational findings. The application before the judge is noted to rely on retained rights by virtue of the Appellant's former marriage to Ms Cherise Langue. The judge set out in some detail the procedural history to this matter, which included that there were agreed facts that there had been an application by the Appellant for a residence card, which had been refused at an earlier hearing, before First-tier Tribunal Judge Shore on 4 October 2018. Judge Shore concluded that there was insufficient evidence to meet the requirements of the Rules that the marriage between the Appellant and Ms Langue had lasted three years and during which time the Appellant and Sponsor had lived in the UK for a period of at least one year.

7. The judge noted that there was then a further application for a residence card but that was also refused by the Respondent. An appeal against that further decision was considered by First-tier Tribunal Khawar. By way of a decision dated 22 August 2019, Judge Khawar concluded that the Appellant was not exercising treaty rights in terms of his work or self-employment at the time that the marriage to the EEA Sponsor ended. The judge noted that the Respondent's RFRL stated that there was no evidence that the Appellant was the spouse of an EEA national, nor was their sufficient evidence to show that the Sponsor had leave to remain in the UK. The judge applied **Devaseelan*** **[2002] UKIAT 702** and considered the earlier decisions as his starting point. The judge noted the new evidence in the form of a letter from Mr Affran Maurice Thierry Boadi, a mutual friend of the Appellant and Sponsor. The judge dealt with this evidence at

paragraphs 43 to 48 of the decision. The judge also dealt with the background in relation to some of the earlier evidence.

The Hearing Before Us

8. The submissions which we have heard today have been eloquently presented by both parties. Mr Badar, on behalf of the Appellant, told us that he and Mr Walker had discussed the matter prior to the hearing commencing. Mr Badar referred us to the background. He highlighted that the previous decisions of Judges Shore and Khawar had accepted the marriage but that the refusals of the applications at that time related to different matters, such as the Appellant's own application in respect of his exercise of his treaty rights. Mr Badar said, if we summarise it, that there was a qualitative difference between applications under the EEA Regulations and applications under EUSS.

9. Mr Walker succinctly and helpfully said to us that he agreed with the position being outlined on behalf of the Appellant. In particular Mr Walker said that the Appellant's circumstances in relation to his previous marriage to Ms Langue indicated that attempts had been made to provide evidence of the marriage. Mr Walker explained that in view of the previous acceptance of the position in relation to the marriage, thereby there were material errors of law in the judge's assessment. Mr Walker said, in view of the evidence that this was a matter in which the appeal fell to be allowed. Mr Walker said that he was inviting us to substitute a decision to allow the appeal and he also added that the Secretary of State should not resile from something that had been decided previously.

Decision on Error of Law and Re-Making of Decision.

10. Having considered the submissions which had been provided to us and having reflected on what is set out within the documentation, it appears to us that the parties have come to a sensible way forward in respect of this matter. We conclude that there is a material error of law in the decision of the First-tier Tribunal in view of the past acceptance of the marriage in the two earlier decisions.

11. In the circumstances, we conclude that the decision of the First-tier Tribunal Judge be set aside.

12. We were invited to re-make the decision and we were jointly invited by the parties to substitute a decision to allow the appeal.

13. We conclude that there was evidence presented to the judge, alongside the two earlier decisions of the First-tier Tribunal, which accepted the background scenario and evidence relating to the Appellant's marriage to the Sponsor. The Appellant was married to an EEA citizen at all relevant times, despite the marriage later coming to an end. We are thereby able to remake the decision at the hearing today. We do so and we consider Appendix EU of the Immigration Rules. As is conceded by the Respondent, the requirements of the Rules in

respect of the EUSS application were met, as opposed to the EEA Regulations, arising out of the accepted marriage at the relevant times.

14. Accordingly, we accept the parties' joint submissions and we remake the decision and allow the Appellant's appeal in respect of the EUSS application.

Notice of Decision

There is an error of law in decision of the First-tier Tribunal and it is set aside.

We re-make the decision at the Upper Tribunal.

We allow the Appellant's appeal pursuant to EUSS.

There is no anonymity direction.

A. Mahmood
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2024