



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001812

First-tier Tribunal No: EA/06992/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE DAVEY
Between

MRS SYEDA NASEER AKHTAR
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr B Syed, sponsor

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

Heard at Field House on 20 February 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Raymond promulgated on 16 December 2021.
2. Permission to appeal was granted by First-tier Tribunal Judge RA Pickering on 4 February 2022.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Background

4. The appellant is a national of Pakistan born in 1948. She applied for a Family Permit under the EU Settlement Scheme to join her EEA citizen sponsor son in the United Kingdom. That application was refused on 8 April 2021 for the following reasons.

You have stated that the family relationship of the EEA citizen sponsor to yourself is dependant parent. As evidence of this relationship you have provided a Government of Pakistan directorate general registration (interior ministry) letter claiming that your son is the sponsor.

- However, we can only accept this evidence in support of other documents and not in isolation. This department would require to see an original birth certificate along with translation if required, in order to prove the relationship with your sponsor.
- I am not satisfied, based on the evidence you have provided in isolation, that you are a 'family member of a relevant EEA Citizen'.

The decision of the First-tier Tribunal

5. The appeal before the First-tier Tribunal was considered on the papers. The judge noted that the sponsor had written to the Tribunal, stating that an official birth certificate had been provided but that document was not on the file. The judge was not prepared to accept the Family Registration Certificate (FRC) as evidence of the relationship.

The grounds of appeal

6. The detailed grounds of appeal, drafted by the sponsor, made the following points.
7. Firstly, the judge made an error of fact in his understanding that a separate original birth certificate existed in addition to the FRC issued by the National Database and Registration Authority (NADRA). The reference to the original birth certificate was a reference to the digitally issued FRC and no additional document existed. The document submitted to the respondent was the document available before NADRA digitalised its databases. Reference was made to a verification process.
8. Secondly, the judge gave weight to immaterial matters including in relation to the sponsor's nationality, the absence of a copy of the sponsor's passport, his qualifications, the name of the sponsor's father, the format of the sponsor's declaration and the reference to DNA evidence.
9. Thirdly, there was a failure to give any or any adequate reasons for findings on material matters.
10. Fourthly, a higher standard of proof was applied than the balance of probabilities.
11. Fifthly and lastly, the decision breached the appellant's and sponsor's rights under Article 8 ECHR as well as Appendix EU (Family Permit).
12. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge has not made findings about the documentation provided by the appellant [§4, 7, 8 and 9] focussing instead on the lack of DNA evidence.

13. The respondent filed no Rule 24 response in advance of the hearing.

The hearing

14. At the outset, Mr Whitfield confirmed that there was no Rule 24 response but that the appeal was opposed. He characterised the grounds of appeal as being an argument as to the weight the judge attached to the NADRA document.
15. Mr Syed relied on the grounds of appeal, mainly arguing that the family registration certificate was widely accepted and could be verified online. As for the suggestion that a birth certificate for his mother could have been provided, Mr Syed stated that his mother was aged seventy-five and used a wheelchair and was unable to travel 192 kilometres to the nearest town where such documents were issued. The NADRA certificate was also promptly submitted with the Home Office.
16. After hearing from both parties, we announced that we were satisfied that the First-tier Tribunal judge materially erred in the treatment of the NADRA certificate and set aside the decision. We immediately proceeded to remake the appeal. Mr Whitfield helpfully advised the panel that the respondent no longer opposed the matter, and he invited us to allow the appeal, stating that, on the civil standard, there was more than enough evidence of the relationship between the appellant and the sponsor. We accordingly announced that the appeal was allowed.

Decision on error of law

17. As indicated above, we found that the judge erred in failing to assess for himself the reliability of the NADRA certificate. Instead, the judge simply noted that there was no birth certificate and made irrelevant comments, including remarks relating to the sponsor's nationality and his profession and raised the absence of DNA evidence. The certificate issued by NADRA was supported by a series of reliable documents which indicated that this was unlikely to be a case where the parties were unrelated. Those documents included evidence of the sponsor's place of birth, his German citizenship, his grant of leave under the EUSS, his home ownership, his Qualified Lawyer Transfer Test and that the appellant previously travelled with Schengen visa to visit the sponsor. During the hearing, the sponsor credibly explained why he considered it unwise to expect his elderly, disabled mother to travel alone over a considerable distance during a pandemic to obtain an original birth certificate. While the judge could not be expected to personally verify the NADRA certificate, this document required independent assessment. The judge's failure to do so amounted to a material error of law which rendered his decision unsafe.

Remaking

18. Mr Whitfield's rightly made concession accorded with the view of the panel. It suffices to say that we accept that there is ample evidence to show, on balance, that the appellant is the family member of the sponsor, Mr Syed and her appeal is allowed on this basis.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

We set aside the decision to be re-made.

We substitute a decision allowing the appeal on the basis that the appellant is the family member of a relevant EEA citizen.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 May 2023

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 May 2023

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.

