



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000083
UI-2023-000084
UI-2023-000085
UI-2023-000086
UI-2023-000087
UI-2023-000088
UI-2023-000089

First-tier Tribunal No: EA/01477/2022
EA/01473/2022
EA/01475/2022
EA/01482/2022
EA/01487/2022
EA/01502/2022
EA/01508/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

SAMALIE ELIZABETH NALULE
MARK LUGOLOILE
SHAUN SSEMONDO MUKASA
BABIRYE KIMERA
SONIA SUUBI MUKASA
SHANTEL KIRABOKYAMARIA MUKASA
NAKATO KIMERA

(NO ANONYMITY ORDERS MADE)

Respondents

Representation:

For the Appellant: Ms A. Everett, Senior Home Office Presenting Officer
For the Respondent: No representation

Heard at Field House on 4 October 2023

DECISION AND REASONS

Introduction

1. In this appeal the Entry Clearance Officer is the Appellant but to maintain consistency with the decision of First-tier Tribunal Judge Morgan (hereafter “the Judge”), I will refer to the parties as they were at that hearing.
2. The Respondent has appealed against the decision of the Judge (dated 19 December 2022) in which he allowed the appeals of the Appellants against the decisions of the Respondent (dated 4 January 2022) under Appendix EU (Family Permit).
3. Permission to appeal was initially refused by Judge Lester on 16 January 2023; but later granted by Upper Tribunal Judge L. Smith on 1 August 2023.
4. In that latter decision, the Upper Tribunal Judge indicated that the Respondent should seek to obtain the recording of the First-tier Tribunal proceedings and make Mr Mavrantonis (counsel on behalf of the Respondent at the First-tier Tribunal hearing) available for the error of law hearing (see paragraph 5).

The Respondent’s challenge

5. In essence, as I will say more about the background later in this judgment, the Respondent contends that the Judge acted procedurally unfairly during the hearing by refusing to grant the Respondent an adjournment in order to consider evidence which was only made available to the Respondent on the day of the hearing – the contentious evidence being a letter from the Uganda Registration Services Bureau (“URSB”) (dated 28 January 2022) which purports to verify the marriage between the sponsor and Appellant 1 by reference to a record held on the marriage register in Uganda.

The error of law hearing

6. The error of law hearing was conducted in a hybrid format: the Sponsor attended in person and Ms Everett joined by video link due to the effect of the day’s train strikes. I am satisfied that there were no technical difficulties such as to have inhibited Ms Everett’s ability to engage in these proceedings.
7. As the Sponsor was represented, I explained to him the nature of the error of law hearing and double checked that he understood the core of the Respondent’s challenge to the decision of the Judge; he confirmed that he understood the point being made.

8. In preliminary discussion, Ms Everett indicated that she had spoken to Mr Mavrantonis about giving evidence and told the Tribunal that if required he would be able to attend the hearing remotely. As I indicated to Ms Everett, it is not appropriate for the Tribunal to advise either party in respect of which witnesses they should call. In any event, I agreed with Ms Everett's further observation that there was no obvious need to hear oral evidence from Mr Mavrantonis bearing in mind the real issue in the case.
9. Having heard a brief submission from Ms Everett, who left the question of procedural fairness to me, I indicated to the Sponsor that I would be dismissing the Respondent's appeal.

Findings and reasons

10. By way of background, it is plain that with the original applications the Appellants provided a certificate of marriage between the Sponsor and Appellant 1 issued by the Full Gospel Church in Buyoga, Uganda on 27 December 2020.
11. In refusing the seven applications, the Respondent gave slightly different reasons between the refusal of Appellant 1 and those of the children.
12. In Appellant 1's refusal, the Respondent concluded that:

"You have stated that the family relationship of the EEA citizen sponsor to yourself is spouse. As evidence of this relationship you have a Full Gospel Church Certificate of Marriage signed by a Pastor.

I would expect to see a marriage certificate issued by a registrar to demonstrate your marriage was registered in accordance with the Uganda Marriage Act 1904."

13. It was on this basis that the Respondent asserted that Appellant 1 had failed to establish that she is a *family member of a relevant EEA citizen* for the purposes of the definition of this term in Annex 1 of Appendix EU (Family Permit).
14. In the refusals of the six child applicants (who are the stepchildren of the Sponsor), the Respondent expressed the reasons for rejecting the applications in a different way:

"The relationship between your mother and your EEA sponsor has not been accepted due to insufficient evidence of relationship provided. A marriage certificate issued by a registrar in accordance with the Uganda Marriage Act 1904 was not provided."

15. In my view the refusal of Appellant 1 was founded on an accusation that the marriage was not valid, and in the refusal of the children that the relationship was not made out on the evidence. These are very different grounds for refusal and indicates a lack of cohesion in the reasoning of the respondent.

16. At the First-tier Tribunal hearing, the Judge recorded that the Appellant had provided a letter from the URSB which indicated that the marriage was recorded on the marriage registry.
17. This document, and the rest of the Appellant's bundle, was not served upon the Respondent in advance of the hearing as it should have been and it was only on the morning of the hearing that Mr Mavrantonis was given sight of the material.
18. In response to the URSB letter, Mr Mavrantonis asked for an adjournment in order for the Respondent to have proper sight of this letter and the other documents in the Appellants' bundle. This application was refused by the Judge.
19. In his witness statement, dated 8 December 2022, Mr Mavrantonis complains that he was not given enough time to consider the Appellants' bundle and was not able to give submissions. Mr Mavrantonis also asserts that he was interrupted and unable to speak fully and that he was pressurised by the Judge.
20. I have taken the allegations made in the witness statement at their highest despite the recording of the transcript of the hearing not being provided by the Respondent and the Judge not being given the opportunity to respond to the allegations as should probably have been done in this appeal, applying Serafin v Malkiewicz & Ors [2020] UKSC 23 at para. 45.
21. In my judgement, the complaint of procedural fairness is not made out.
22. The key difficulty with the Respondent's case is explained at para. six of the judgment. The Judge records that Mr Mavrantonis "*accepted that the sole matter raised by the Respondent was whether or not the Appellant and her husband had contracted a valid marriage. He accepted that the Respondent had provided no evidence, other than this assertion in the refusal, that would enable or justify a finding that the marriage was not valid*".
23. I should note at this stage that that Mr Mavrantonis does not suggest in his witness statement that the Judge's description of this preliminary discussion is incorrect. Ms Everett also accepted that there was no challenge to the Judge's description of Mr Mavrantonis' preliminary submission at paragraph 6.
24. The Judge went on to find "*[i]n light of this absence of any evidence and certainly no good reason provided to enable a finding that the marriage was not valid I find that it was*". It is notable that was only after this finding that the Judge goes on to make reference to the letter from the registrar.
25. At para. 9 the Judge further confirms that there was no good reason put forward by Mr Mavrantonis to "*go behind*" the marriage certificate.
26. Ms Everett accepted, as she was right to do, that in neither version of the refusal letters did the Respondent make reference to any domestic or Ugandan law, or any background or expert evidence to justify the position taken that the certificate of

marriage from the church was insufficient to establish that the Sponsor and Appellant 1 are married as claimed.

27. That being the case, it is abundantly clear in my view, that the very late production of the URSB letter and the subsequent issues to do with the request for an adjournment, are not ultimately relevant to the material issue before the Judge.
28. In her submission, Ms Everett left the question of whether or not there had been procedural fairness to the Tribunal. I have explained why I do not accept that the Judge acted in a way which is procedurally unfair. The short answer to the case is that Mr Mavrantonis conceded that the Respondent had simply not provided sufficient evidence to justify the assertion that the marriage certificate provided with the applications was insufficient to show that the Appellants were *family members of a relevant EEA citizen*. This concession was fatal to the Respondent's single point of refusal and the Respondent has not attempted to withdraw it.
29. It is also clear that he did not contest that the only issue in the appeal related to validity and he did not seek to argue that the genuineness of the relationship was also in issue; equally that was not a point taken by Ms Everett.

Notice of Decision

30. I therefore dismiss the Respondent's appeal and the decision of the Judge stands.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 October 2023