



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003258

First-tier Tribunal No: EA/00684/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

AQIB ATTBAR
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 27 September 2024

DECISION AND REASONS

Introduction

1. The Appellant is a national of Pakistan born on 1 August 1996. He appealed against the refusal of his application under the EU Settlement Scheme (EUSS) as a family member (spouse) of an EEA national with a right to reside in the United Kingdom. His appeal was dismissed by First-tier Tribunal Judge Mulholland (“the FTTJ”) in a decision promulgated on 5 June 2024.
2. Permission to appeal was granted on 1 July 2024 by First-tier Tribunal Judge Turner on the basis that it was arguable that the FTTJ had erred in law in making findings in relation to matters not in dispute in the appeal and matters that were not relevant. Given that the issue in respect of

which the findings had been made had not been raised by the Respondent, the Appellant was not given an opportunity to respond.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and the decision should be set aside.

Submissions – Error of Law

4. The Appellant did not attend the hearing. My clerk emailed him due to his non-attendance and requested that he inform the Upper Tribunal whether he intended to attend the hearing. In reply he stated that he had been involved in a car accident and requested that the hearing proceed on the basis of the evidence and representations provided. In light of his request to proceed in absence and the fact that he confirmed that he wished to rely on the documentation before the Tribunal, I exercised my discretion under Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and concluded that it was in the interests of justice to proceed with the hearing.
5. At the hearing Ms Gilmour relied on the Rule 24 response. It asserts that the FTTJ was entitled to consider all of the evidence before him including the marriage certificate and make findings of fact regarding any documentation produced in support of the appeal. The Appellant's bundle had not been served on the Respondent and the Respondent was unable to comment on any issues regarding the marriage certificate or other documentation produced in the Appellant's bundle. The FTTJ had made a finding that the Appellant had not produced sufficient evidence to demonstrate that he was a spouse of an EEA national. That was an issue that the FTTJ was required to determine. The approach did not disclose a material error of law. No application had been made by the Appellant to rely on unreported determinations and the Appellant should not be able to rely on the documents.

Conclusions – Error of Law

6. The Grounds are drafted by the Appellant and argue that the FTTJ did not consider the issues set out in the refusal letter and proffer explanations for matters in relation to the adverse findings.
7. The Appellant applied under the EUSS as the "spouse of a relevant sponsor" and elected to have his appeal decided on the papers before the First-tier Tribunal. The Respondent's refusal letter dated 3 March 2024 refused the application as he had not supplied the required evidence of family relationship for a spouse. The refusal letter notes that the Appellant had been contacted between 10 February 2024 and 24 February 2024 to ask for the specified evidence but it had not been provided. The application was considered under rules EU11 and EU11A and EU14 and EU14A but it was concluded that the Appellant did not meet the requirements.

8. The Respondent's requests for additional information from the Appellant are at pages 6 to page 20 of the Respondent's bundle and are dated 3 and 10 February 2024. He was requested to provide evidence that his sponsor had been granted status under the EU Settlement Scheme in the form of their Unique Application Number and evidence of the relationship to the EEA sponsor in the form of a full original marriage certificate; a full original civil partnership certificate or a valid EEA ID document establishing the relationship. Further evidence of the marriage was required if it took place before December 2020.
9. The Appellant provided a bundle of documents for his hearing before the FTT. In his skeleton argument he states that the Respondent never contacted him as asserted in the refusal letter. He said he had been in a relationship since March 2017 and married in Romania on 22 January 2020. He provided his marriage certificate, his wife's passport, confirmation that she had been granted indefinite leave (settled status) to remain under paragraph EU2 of Appendix EU to the Immigration Rules, bank statements and bills in joint names.
10. Ms Gilmour accepted that given the Appellant was married before December 2020 the evidence he was required to produce to satisfy the requirements of the Rules was evidence that his sponsor had been granted status and a full original marriage certificate.
11. The FTTJ properly refused to take account of a number of First-tier Tribunal decisions relating to other people as the Appellant had not made an application under paragraph 8 of the Practice Statement of the First-tier Tribunal to cite unreported decisions. The Appellant seeks to rely on those decisions again before the Upper Tribunal but in the absence of the proper application I cannot take them into account.
12. The Appellant had ostensibly provided the evidence required to satisfy the requirements of Appendix EU by the time his appeal was considered by the FTTJ. He had provided his marriage certificate which was in both Romanian and English. He had provided a letter confirming his sponsor had settled status, albeit it is unclear whether the letter shows her Unique Application Number. However, the reasons the appeal was dismissed by the FTTJ were that the Appellant had not provided evidence of arranging a marriage in Cyprus; there was an absence of evidence of communications between the Appellant and sponsor before, during and after the marriage and evidence of payment for the marriage and photographs before, during and after the wedding. This led the FTTJ to doubt the reliability of the marriage certificate. Further, the FTTJ found there was insufficient evidence to demonstrate that the Appellant was a spouse as it was unexplained why he would apply to enter the UK as a student in October 2023 if he was already married to the sponsor. Further, it was questionable why the Appellant would have a bank account in Cyprus when he was living in Pakistan and why the sponsor would financially support him in 2020 and 2021 when there was an absence of evidence that he was dependent on the sponsor. In

respect of the Western Union transfers and utility documentation, the FTTJ made a finding that they could be 'contrived in attempt to demonstrate dependency for the purpose of gaining an immigration advantage'.

13. The difficulty with the reasons provided for dismissing the appeal is that not only did they relate to matters in relation to which the Appellant did not have an opportunity to comment, but they also clearly related to matters of credibility. It is apparent that, although the appeal was dismissed for want of evidence that the Appellant was the spouse of an EEA national, the FTTJ doubted the reliability of the marriage certificate, concluded that the bank statements could be easily reproduced and that the money transfers and utility documents could be used 'to frustrate immigration control and to gain an immigration advantage'.

14. The Upper Tribunal in SSGA (Disposal without considering merits; R25) Iraqi [2023] UKUT 00012 (IAC) set out guidance when consideration was being given to whether or not an appeal should be disposed of without a hearing. At paragraph 4 (ii) the headnote states:

"Any decision whether to decide an appeal without a hearing is a judicial one to be made by the judge who decides the appeal without a hearing. The mere fact that a case has been placed in a paper list does not and cannot detract from the duty placed on the judge before whom the case is listed as a paper case to consider for himself or herself whether one or more of the exceptions to the general rule apply."

15. And at paragraph 4 (iv):

"A hearing should be held whenever credibility is disputed on any material issue or fact. Cases in which it would be appropriate to determine an appeal without a hearing if credibility is materially in issue would be rare indeed. In almost all cases, the appropriate course of action would be to list the case for a hearing and decide the case on such material as is before the Tribunal."

16. The FTTJ did not explain why the appeal could be justly determined without a hearing when there were the substantial concerns in relation to the reliability of the documentation. The Respondent's refusal was on the grounds of the lack of a full original marriage certificate and proof of the sponsor's status. The Appellant ostensibly provided those documents but the appeal was dismissed on the basis of findings with regard the reliability of documents and credibility in relation to matters in respect of which the Appellant was not afforded an opportunity to comment. I conclude therefore that the FTTJ proceeded in a procedurally unfair manner.

17. Accordingly, with reference to paragraph 7.2 of the Practice Statement and having considered the applicable principles as set out in of AEB v SSHD [2022] EWCA Civ 1512 and Begum (Remaking or remittal)

Bangladesh [2023] UKUT 00046 (IAC) it is appropriate to remit it to the First-tier Tribunal because of procedural unfairness.

18. I am mindful that the Respondent had no opportunity to review the Appellant's evidence and given my findings and Ms Gilmour's concerns expressed at the hearing with the Appellant's evidence, it is appropriate to list the appeal for an oral hearing in the First-tier Tribunal. The appeal will be time-tabled and the Respondent will be given an opportunity to review the evidence and amend the refusal decision if required.

Decision:

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. I set aside the decision.
3. The appeal is remitted to the First-tier Tribunal for an oral hearing before any Judge other than Judge Mulholland.

Signed

L Murray

Judge L Murray
Deputy Upper Tribunal Judge

14 October 2024

