



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003779
EA/14992/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 30 November 2022**

**Decision & Reasons Promulgated
On the 05 January 2023**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**AMANPREET SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Unrepresented and no appearance

For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

- 1.** This is an appeal against the decision of First-tier Tribunal Judge Monson (“the judge”), promulgated on 13 July 2022. By that decision, made without a hearing, the judge dismissed the appellant’s appeal against the respondent’s refusal of the appellant’s application under the EUSS. The

appeal was brought under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.

2. The appellant, a national of India, applied as the family member of the sponsor, Ms Kaur, who had settled status under the EUSS. It appears as though she was the daughter of an EEA citizen and that she had been granted status in this country on that basis.
3. In support of the application, the appellant had provided a marriage certificate from the Indian authorities, purporting to confirm his marriage to the sponsor in India on 17 August 2020 (in fact, the certificate related to the registration of that marriage on 20 August 2020). The basis of the respondent's refusal was that the appellant had failed to provide evidence to show he was the spouse of the sponsor; that the "Hindu marriage certificate" had been issued in the United Kingdom; that the "UK Islamic marriage certificate" was not evidence of a marriage recognised in the United Kingdom.

The decision of the First-tier Tribunal

4. The appeal was dealt with as a "paper case".
5. The judge began his analysis by concluding that the respondent's refusal letter was flawed in two respects. First, the appellant had never provided an Islamic marriage certificate in support of his application. Second, the appellant had indeed provided evidence to show that the sponsor had indefinite leave to remain under the EUSS (the judge did not think that the sponsor was the child of an EEA citizen, but was herself such a citizen - on inspection of the papers, it appears as though she was in fact the adult child of an EEA citizen - her passport was Indian not that of an EEA State).
6. The judge then went on to consider the "Hindu marriage certificate". Contrary to what the respondent had believed, the certificate had not been issued in the United Kingdom, but in India. This was a further failing in the respondent's decision-making.
7. The judge stated that it was for the appellant to prove that a foreign document such as a certificate could be relied on the judge found it to be "implicit" in the EUSS application that both the appellant and the sponsor had resided at all material times in the United Kingdom and that neither of them was in India on the date that the marriage purportedly took place. A reason given for this conclusion was the fact that the respondent had been in possession of the appellant's passport for the previous two years and it would have been impossible for him to have travelled to and from India in 2020. The judge could see nothing in the certificate which indicated that the marriage had been a proxy marriage, lawfully conducted in India.
8. In light of the above, the judge concluded that the certificate was unreliable and that the appellant had failed to show that he was validly

married to the sponsor. The appeal failed in respect of the two grounds of appeal available to the appellant under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020. Article 8 was not a live issue.

The grounds of appeal

- 9.** The appellant drafted his own grounds of appeal. These essentially took issue with the judge's findings in relation to the certificate. In particular, it was said that the judge had acted unfairly by raising the reliability of the certificate when this had never been a point taken by the respondent. Given the flaws in the respondent's refusal letter, the appellant claimed that the judge's decision was unfair.

The hearing

- 10.** Prior to the hearing, an email was received by the Upper Tribunal to the effect that the appellant would not be attending and wished his case to be decided "on the papers". I was satisfied that the notice of hearing had been sent and received and there was nothing to indicate that the email was written on anything other than an informed basis. Ms Isherwood urged me to proceed in the appellant's absence.
- 11.** I considered rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I concluded that it was fair and in the interests of justice to proceed.
- 12.** Ms Isherwood saw some merit in the appellant's challenge in that the judge had taken a point of his own volition and had not given the appellant an opportunity to respond to it. On the other hand, Ms Isherwood emphasised that the burden of proof rested with the appellant to have shown that the marriage certificate was reliable. She the sponsor appeared to be the child of an EEA national, but she was not able to demonstrate that this was, in and of itself, fatal to the appellant's case.
- 13.** At the end of the hearing I reserved my decision.

Discussion and conclusions

- 14.** Before turning to my analysis of this case I remind myself of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Low [2021] EWCA Civ 62, at paragraphs 29-31, AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41, and UT (Sri Lanka) [2019] EWCA Civ 1095, at paragraph 19.

- 15.** It was of course for the appellant to prove his case, whether he opted for a hearing or not. He provided the marriage certificate and he was required to show that it was reliable in the sense of showing that he had validly married the sponsor in August 2020.
- 16.** I have concluded that there was procedural unfairness in this particular case.
- 17.** The appellant had submitted the certificate to the respondent. She had issued a refusal letter which was found by the judge, in many respects, flawed. No issue had been taken by the respondent with the reliability of the certificate. There had been no suggestion that it was a forgery, or that it related to a proxy marriage.
- 18.** On that basis, the appellant had not been put on any form of notice that the certificate was disputed prior to his appeal being decided.
- 19.** When the judge came to consider the evidence, he noted that both the appellant and the sponsor appeared to be resident in United Kingdom and the also (rightly) observed that the appellant had not had a passport on which to travel to India. Seen in isolation, he was in my view entitled to conclude that the appellant had not travelled to India for the marriage.
- 20.** The judge was concerned that the certificate did not state in terms of the marriage was on a proxy basis. Yet, I cannot see from the papers before me, and nothing was said in the decision itself, as to whether a certificate would state that fact. The judge did not cite any evidence to show that proxy marriages are not valid under Indian law. The document appears to emanate from an official source and the clearly confirms that a valid marriage did take place.
- 21.** Once the judge decided to raise the issue of the reliability of the certificate, and in turn the validity of the marriage, as a live issue, a number of questions arose. Given the importance of those questions and the centrality of the certificate, in my judgment the judge should have had regard to the need for procedural fairness and given the appellant an opportunity to respond to the concerns, whether in writing or by way of a hearing.
- 22.** I appreciate that it might be said that the appellant could and should have provided further evidence together with his grounds of appeal and thereby potentially answering a number of the concerns raised by the judge. Having said that, the appellant has at all times been unrepresented and I am not confident that he will have appreciated how and in what form any such evidence could have been provided to the Upper Tribunal.
- 23.** In all the circumstances, I conclude that the judge did act unfairly by proceeding to decide the appellant's appeal without giving him an opportunity to address the concerns relating to the validity of his marriage

to the sponsor. This unfairness constitutes an error of law and, again in all the circumstances, I regard it as being material.

- 24.** Given that the error of law identified as that of procedural unfairness, it is appropriate to remit this appeal to the First-tier Tribunal for a complete re-hearing with no preserved findings of fact.
- 25.** The appellant well-advised to consider providing further information to the First-tier Tribunal about the nature of his marriage to the sponsor. He should bear in mind the following questions:
- (a) Were he and the sponsor in India for the marriage itself?
 - (b) If it was done by proxy (in other words, that neither he nor the sponsor were present in India at the time of the marriage), are such marriages legal in India?
- 26.** It may also be necessary to reach a clear finding of fact as to whether the sponsor is herself an EEA national or the child of such a national. Depending on such a finding, there may or may not be a consequence in respect of satisfying the requirements of Appendix EU.

Anonymity

- 27.** The First-tier Tribunal made no direction and nor do I.

Notice of Decision

- 28. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
- 29. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**
- 30. I remit the case to the First-tier Tribunal.**

Directions to the First-tier Tribunal

1. This appeal is remitted to the Taylor House hearing centre to be reheard by a judge other than First-tier Tribunal Judge Monson;
2. There are no preserved findings of fact.

Signed: H Norton-Taylor

Date: 5 December 2022

Upper Tribunal Judge Norton-Taylor