



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2023-002877

First-tier Tribunal No:
EA/51762/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 17 January 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Shozib Ali
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: No appearance by or on behalf of the Appellant
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 January 2024

DECISION AND REASONS

INTRODUCTION

1. There was no appearance by or on behalf of the appellant at the hearing before me. I am satisfied the appellant is aware of the hearing of this appeal. According to the Tribunal's records, on 13 January 2024, a letter was received from the appellant. The letter was sent to the Tribunal under cover of an email to the Tribunal from the appellant's email account. I

have had regard to that letter. The letter does not elaborate upon the grounds of appeal but simply asks the Tribunal to remit this appeal to the FtT for hearing afresh. In all the circumstances I am satisfied that it is just and appropriate to hear the appeal in the absence of the appellant and/or sponsor.

2. The appellant is a national of Pakistan. On 9 September 2022 he made an application for an EU Settlement Scheme (EUSS) Family Permit. He claims to be a family member of Ms Maya Biserovia, a Bulgarian national exercising treaty rights in the UK. He claims he married Ms Maya Biserovia ("the sponsor") on 4 February 2020 in Pakistan, and that they subsequently lived together in Cyprus.
3. The application was refused by the respondent for reasons set out in a decision dated 12 December 2022. The respondent noted that as evidence of the relationship between the appellant and sponsor, the appellant provided a marriage certificate issued on 15 February 2020. The respondent referred to concerns about the information set out on the document and was not satisfied that the document in isolation, is evidence of the appellant's relationship with the sponsor. The respondent was not satisfied that the appellant has established that he is a 'family member' of a relevant EEA Citizen.
4. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Joshi ("the judge") for reasons set out in a decision dated 6 May 2023. The judge too found that the appellant has not demonstrated that he is a 'family member of a relevant EEA citizen.'. The judge referred to:
 - a. The official marriage certificate (*at page 28 of the Respondent's bundle*)
 - b. A corrected marriage certificate (*at page 4 of the Appellant's bundle*)
 - c. A letter from the Union Council Ghakka Mitter No 3 dated 22 December 2022 explaining a clerical error in the English translation and claiming that the correct certificate has been issued.
 - d. The timing of the marriage and absence of other evidence that could have been provided to support the claimed relationship given the concerns about the marriage certificate.
 - e. The inconsistent information set out on the application form. The appellant claimed the relationship began on 22 January 2022, yet also claimed they married on 4 February 2020. The appellant also claimed they met for the first time on 19 January 2020 and if that is correct, the appellant and sponsor married shortly after they first met. There was an absence of evidence of how the relationship developed through contact via social media.
 - f. The absence of evidence from the sponsor (*who did not attend the hearing of the appeal*) as to the context in which they met and the

background to their marriage. Such evidence could have supported the claim that the document relied upon was an accurate record of their marriage.

- g. A boarding pass demonstrating the sponsor travelled from Heathrow to Islamabad on 18 January 2020 and flight tickets demonstrating the sponsor travelled
 - i. from Lahore to Gatwick on 18 May 2020
 - ii. Heathrow to Islamabad on 9 January 2021
 - iii. From Heathrow to Islamabad (return trip) in July and August 2021
 - iv. From Heathrow to Islamabad (return trip) in February and March 2023
- h. The absence of information regarding the appellant's travel, and the absence of supporting evidence such as photographs or communication between the appellant and sponsor to demonstrate they met during the sponsor's visits to Pakistan

THE GROUNDS OF APPEAL

- 5. In summary the appellant claims that in reaching his decision, the judge failed to have regard to a death certificate relating to the death of the sponsor's son, in which the appellant is named as 'father'. The appellant's son was conceived during the sponsor's visit to Pakistan. The appellant also claims there was evidence of money transfers, as evidence of the on-going relationship between the appellant and sponsor. The appellant claims the evidence relied upon establishes the appellant and sponsor are in a genuine relationship and the failure to have regard to relevant evidence is material to the outcome of the appeal.
- 6. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 11 September 2023. She said:

"Evidence of the sponsor's trip is considered at paragraphs 21 and 22 of the decision however there is no reference to the death certificate of the couple's son and money transfers from the sponsor to the appellant which was evidence arguably before the First tier Tribunal at the date of the appeal being determined on the papers as it is in the bundle entitled "All Bundle Highlighted pdf" on CCD/ Judicial Case Manager which is recorded as having been uploaded on 24th April 2023, when the date of decision is 6th May 2023. It is arguable therefore that not all material evidence was considered by the First-tier Tribunal when concluding the appellant and sponsor are not married/partners and thus that the appellant is not a family member."

THE HEARING OF THE APPEAL BEFORE ME

- 7. Although no rule 24 response has been filed by the respondent, on behalf of the respondent, Mr Bates concedes the judge failed to have regard to evidence that was before the Tribunal that was capable of supporting the

appellant's claim. Although the evidence was not determinative of the issue, Mr Bates accepts the failure to have regard to the evidence is capable of being material to the outcome of the appeal.

DECISION

8. The concession made by Mr Bates that the decision of the FtT judge is infected by a material error of law is in my judgment entirely sensible and appropriate. The judge was entitled to set out the concerns that he had regarding the evidence that he plainly did consider. The criticisms made by the judge and the reasons given by the judge for concluding that the documents are unreliable were open to him.
9. However there was evidence in the appellant's bundle comprising of 39 pages that was capable of supporting the appellant's claim regarding his relationship with, and marriage to the sponsor that the judge does not refer to, or address. In particular, there was a 'death certificate' relating to the death of Muhammad Ali on 11 December 2022. The death certificate confirms Muhammad Ali was born on 15 November 2022. In section 6, under the heading 'Occupation and usual address' it is said "*Son of Shozib Ali*". I make four observations about the evidence:
 - i) The Death Certificate on its own may not establish that the appellant was Muhammad's father. A death certificate is based upon information provided by the informant and does not, in terms, record parentage. The appellant did not provide the more relevant document which does record parentage. That is, the birth certificate.
 - ii) Muhammad Ali is likely to have been conceived in January/February 2022. At page 11 of the appellant's there is evidence of an invoice addressed to the sponsor relating to a flight from Heathrow to Islamabad on 10 January 2020 and a return flight on 20 February 2022. The relevant flight tickets have not been provided. The best evidence to establish the sponsor's travel to and from Pakistan is likely to be the sponsor's passport(s) which will have the relevant visas and exit/entry stamps endorsed on it.
 - iii) The fact that the sponsor travelled to Pakistan is not, on its own, evidence that the sponsor met or stayed with the appellant during any particular visit to Pakistan.
 - iv) The evidence of money transfers between the sponsor and appellant is not, on its own, evidence of a relationship as claimed by the appellant.
10. A holistic view of all the evidence must be taken. It is not unreasonable to expect that a Tribunal judge would be looking for wider evidence of a familial relationship existing between the appellant and sponsor in an appeal such as this. I make these observations because the appellant

should not assume that his appeal is bound to succeed if the evidence that the judge did not refer to, is considered. For present purposes I simply cannot be satisfied that the judge would have dismissed the appeal if the evidence had been considered, and I therefore accept that the decision of the FtT must be set aside. The appellant should carefully consider the gaps in the evidence and may wish to address those matters before the decision is remade

DISPOSAL

11. I am conscious of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
12. Having regard to the nature of the error of law, I accept the appellant was deprived of a fair opportunity to have all the evidence he relied upon considered by the FtT and the appropriate course, in fairness to the appellant, is for the appeal to be remitted for rehearing before the FtT.

NOTICE OF DECISION

13. The decision of First-tier Tribunal Judge Joshi dated 6 May 2023 is set aside with no findings preserved.
14. The appeal is remitted to the FtT for hearing afresh with no findings preserved.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 January 2024