



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers:
UI-2022-000460 (EA/03960/2021)
UI-2022-000461 (EA/03955/2021)
UI-2022-000462 (EA/03958/2021)

THE IMMIGRATION ACTS

**Heard at Field House
On 12th May 2022**

**Decision & Reasons Promulgated
On 1st August 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**OUMOU DIALLO (FIRST APPELLANT)
ADJA NDIAYE (SECOND APPELLANT)
AISSATOU NDIAYE (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - UKLPA (LIVERPOOL)

Respondent

Representation:

For the Appellants: Mr I Diarra Queens Court Law

For the Respondent: Ms S Cunha Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants who are citizens of Senegal appeal against the decision of First-tier Tribunal Judge Dean who dismissed their appeals against the decisions of the Entry Clearance Officer refusing their applications for EEA family permits, as spouse and children, to join their sponsor in the United Kingdom as his direct family members under the Regulations 7 and 12 of

the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”)

2. The grounds for permission to appeal were threefold (i) the wrong burden or proof had been applied in accordance with regulation 9(4) of the EEA Regulations (ii) the judge failed to recognise that the two marriages were the same and the document followed the procedure of the Senegal authorities (iii) financial support was not required for the second and their appellants as they were under 21 years of age.
3. The sponsor is an Italian national residing in the United Kingdom who had provided an Italian passport and ID card. The Entry Clearance Officer stated that as evidence of the relationship the first appellant had provided a marriage certificate, copy dated 13th June 2019. The Entry Clearance Officer identified that the marriage was conducted by proxy laws. The Entry Clearance Officer also identified that the UK would accept a proxy marriage as a valid form if
 - (1) the marriage by proxy did not take place in the UK; and
 - (2) the marriage was recognised as valid in the country in which it took place; and
 - (3) that the marriage was performed and registered so that it satisfied the laws of the country in which it took place.

To satisfy this requirement it is expected that the first appellant would provide her valid marriage certificate and a letter from a registrar or government authority from the country in which the marriage was contracted confirming the marriage was registered properly. However the Entry Clearance Officer found that she had provided no evidence to confirm that her marriage was performed and registered so as to satisfy the requirements of the laws of Senegal, therefore it could not be accepted that she was related as claimed. The marriage certificate alone was insufficient in evidencing that the marriage was conducted in accordance with Senegalese law and the application was refused under Regulations 7 and 12 of Immigration (European Economic Area) Regulations 2016.

4. The Entry Clearance Officer also challenged the relationship that the second and third appellants had. It was identified that the birth of the second appellant was registered six and a half years after the birth and it could not be accepted as reliable evidence in the absence of other relevant birth documentation issued at the time or other credible documentation evidencing the parentage. As such the Entry Clearance Officer was not satisfied that the appellants were related as claimed to the sponsor.
5. In relation to the third appellant it was noted that the birth certificate was not the original birth certificate and that it was produced on 3rd February 2020, approximately six months after the appellant’s birth. The third appellant was said to have been born in 2013 but a birth certificate was produced on 3rd February 2020 and, given the late registration of the birth

certificate of the third appellant and that of her sibling, the certificates were not accepted as reliable evidence in the absence of other relevant birth documentation issued at the time of the event or other credible documentation evidencing parentage.

6. First-tier Tribunal Dean made the following findings of fact and credibility. He found at [8] that the marriage certificate submitted in the respondent's bundle was dated 13th June 2019 although the marriage was said to have taken place on 14th June 2011. In support of the appellants' appeal there was produced a copy of another marriage certificate which was dated 28th May 2018 and which states that the first appellant and her sponsor were married on 20th February 2011 and that the marriage was registered on 14th June 2011. The judge found at [9] "there is an inconsistency as to the date on which the marriage took place which I therefore further find undermines the veracity of the documents and goes against the first appellant's claim to be married to her sponsor".
7. The judge also found at [12] that in order for a proxy marriage to be accepted the first appellant should submit not only a valid marriage certificate but also a letter from a registrar or government authority in Senegal stating that the marriage was properly registered and indeed the first appellant was aware of this because it was set out in the 'notice of decision' (refusal) but had not provided evidence to satisfy that requirement.
8. There was an inconsistency, as the judge recorded at [13], as to the date on which the marriage was alleged to have taken place and this went against the appellant's claim to be married to the sponsor.
9. At [14] the judge found that there was no other evidence submitted of the first appellant's marriage to her sponsor and there were no photographs and no evidence of the couple together as a husband and a wife albeit the sponsor was said to have visited Senegal.
10. The judge concluded that looking at the totality of the evidence before him she had not fulfilled the requirements that she was a family member of an EEA national, and she did not meet the requirements of the Immigration (European Economic Area) Regulations 2016.
11. In relation to the second and third appellants at [16] the judge found that the birth certificates were submitted but not only were they were not original documents but they were only "extracts" from the birth register issued on 3rd February 2020. The respondent, as noted, did not accept these documents as evidence of the parentage.
12. At [17] the judge recorded that in support of their appeals, copies of their passports, together with two translated documents were provided. The translated documents stated that they were the "Birth Entry" in the registry for the second and third appellants of their respective dates of birth. Although the documents stated that they were translated on 30th

March 2021, again there were no original documents. No other documentation was submitted as evidence of their claimed parentage and the judge found these documents did not advance the claim the second and third appellants were the children of the first appellant and the sponsor.

13. From [18] to [20] the judge considered whether the second and third appellants were dependent upon the sponsor. This is not a requirement under the Regulations as the appellants would appear to be under the age of 21 and therefore the requirements under financial dependency did not apply.
14. The grounds for permission to appeal submitted that the judge had fundamentally misconceived the law in concluding that the documents did not advance the claim. It was asserted in ground (i) that the wrong burden of proof was applied. It was stated that where a decision to refuse a family permit is premised upon a conclusion that the documents were not valid, the burden of proof lay with the respondent and paragraph 9(4) of the EEA Regulations applied.
15. At the appeal before me Mr Diarra accepted that Regulation 9(4) of the EEA Regulations related to British citizens and as the appellant was an Italian national this regulation had no relevance in this regard.
16. Ms Cunha correctly relied on **Cudjoe Proxy marriages, burden of proof [2016] UKUT 180** which held as follows
 1. *It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove.*
 2. *The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place is not limited to the production of a marriage certificate, as is recognised in Kareem (Proxy marriages - EU law) [2014] UKUT 24 (IAC).*
 3. *In cases where a divorce has taken place prior to the proxy marriage and there is an issue as to whether the parties were free to marry, it is for an appellant to show that the dissolution of the previous marriage was in accordance with the laws of the country in which it occurred.*
17. It is quite clear from this headnote that the reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove and it was open to the judge on the basis of the evidence provided and for the reasons given, as identified above, to reject the documentation that was put forward by the appellant.

18. The grounds for permission to appeal at ground (ii), advanced that the judge failed to identify that the two marriages were the same. It was asserted that the second marriage certificate which was provided was a duplicate of the first and had not been altered. However as the judge identified the marriage certificates related to entirely different dates and it was open to the judge to have found the documents were not reliable to show a marriage and it is for the appellants to show that the proxy marriage had complied with the laws of Senegal, and it was open to the judge to find they had not done so particularly when faced with documentation which was so fundamental was flawed. Nothing was produced to show that the Senegal authorities sanction documents which give differing dates for a marriage.
19. The judge gave sound reasoning for his finding and mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412. It is for the appellants to show that the documentation was reliable, and the Entry Clearance Officer had made no reference to false documents or dishonesty. The judge found the documents unreliable and, as stated above, found that the documents did not evidence the marriage.
20. In relation to the documentation of the second and third appellants the judge did articulate clear reasoning for rejecting the documentation in relation to their births and gave reasoning independent of the Entry Clearance Officer. The judge noted the shortcomings of the evidence at [16] observing there was no original evidence and further at [17] again found that not only was the documentation provided not original but also limited in that no other documents save that identified had been provided that the second and third appellants were the children of the sponsor. The judge has not simply adopted the reasoning of the Entry Clearance Officer.
21. Ground (iii) asserted that the judge failed to understand that financial support was not required when under the EU law when family members were under 21 years old. It was correct that the judge did make an analysis of the dependency of the second and third appellant but at [17] found that the documents provided did not evidence the claim the second and third appellants were the children of the first appellant and the sponsor. Thus the appellants were found to have failed to fulfil the fundamental requirement under Regulation 7(1)(b) that they were direct descendant of the sponsor. I note that the judge made the finding in the alternative at [21], stating that the second and third appellants had not demonstrated to the required standard that they were related to the sponsor as claimed or that they were dependent upon him.
22. In the light of the findings as set out I find that there is no material error of law in the judge's decision which was adequately reasoned, and the burden of proof properly applied.

23. There is no material error of law, and the decision of the First-tier Tribunal shall stand. The appellants' appeals remain dismissed.

No anonymity direction is made.

Signed Helen Rimington

Date 15th June 2022

Upper Tribunal Judge Rimington