



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005438

First-tier Tribunal No: EA/01979/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Afzaal Ahmed
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No attendance, not represented

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 23 February 2024

DECISION AND REASONS

1. There was no attendance on behalf of the appellant however, the appellant had emailed the Tribunal on 21 February stating that the sponsor was not able to attend. The appellant is not legally represented, the sponsor was on holiday. The appellant canvassed the question of an adjournment for a video hearing. Given the late notice and given that a video hearing would have required him to be sent a connection link it was not possible to arrange such a hearing at short notice. I directed that in response to the email the matter would remain in the list, noting that the appellant had stated that he was content for the parties to proceed on the papers. Although there is no attendance on behalf of the appellant today no adverse inference was drawn for that reason.
2. By the decision of the First-tier Tribunal (Judge Oxlade) dated 6 December 2023 the appellant, a national of Pakistan, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Phull) promulgated on 6 September 2023 dismissing his appeal against the respondent's decision of 5 July 2022 to refuse his application made on 27

February 2022 for a EUSS family permit as a family member (spouse) of a relevant EEA citizen (Swedish) pursuant to Appendix EU(FP) of the Immigration Rules.

3. In summary, the grounds argue that the First-tier Tribunal wrongfully concluded that the marriage documents were not reliable on the basis of an alleged discrepancy issuing the sponsor's stated age at the date of marriage and her date of birth, as recorded on her passport, but failed to specify what was her correct age at the date of marriage and failed to consider other documents (the FRC, sponsor's ID card, and the Urdu Nikah Nama with translation) which purportedly confirmed the sponsor's date of birth and the date of the marriage.
4. In granting permission Judge Oxlade considered it arguable that the judge erred by not specifying exactly where the discrepancy lay but more importantly he made no reference to the other documents filed and how they otherwise supported the appellant's case and so failed to show that he considered all the evidence in the round.
5. The appellant had previously been refused a family permit in which the Entry Clearance Officer had raised concerns as to the authenticity of the marriage certificate provided with that earlier application, because of discrepancies as to the ages of the appellant and her alleged spouse sponsor, clearly that put the appellant on notice. With the application giving rise to the refusal which was appealed in this case, the appellant had provided an amended marriage certificate. It is far from clear how this alteration was brought about and as the Entry Clearance Officer stated:

“.... you have provided no further evidence that has been issued by the competent authority attesting to the alteration made on an official document. As a result, it cannot be accepted that such changes have been made by a relevant person associated to the competent authority and that the document is therefore valid.”
6. The respondent also noted that there remained a small discrepancy between the sponsor's age and the date of birth given in her passport on the new marriage certificate.
7. To address this concern the appellant had adduced some further evidence. As the judge noted at paragraph 9 of the decision:

“A letter from the Union Council, Tehsil Sargodha, dated 25 July 2023, confirms that there was a clerical error made on the Appellant's marriage certificate in 2020. The clerical error was made by the staff at their department in calculating the age of the Appellant and sponsor while inputting the data. They received an application for correction of the record by the Appellant. Having carefully checked and verified all the details with the health department as well as the NADRA, they were satisfied a clerical mistake had been made when the registration of the marriage was completed in 2020. This was corrected on the new marriage certificate issued on the 07 July 2023. The letter was signed by the secretary of the Union Council.”

This letter appears at page 11 of the appellant's bundle.

8. However this letter did not address the remaining age discrepancy identified in the refusal decision. In that light at paragraph 10 of the decision, the judge concluded “As a result, reasonable doubt is cast regarding the authenticity of the documentation produced in support of the Appellant and sponsor’s relationship.” This is addressed further at 11 of the decision when the judge clearly specified the nature of the discrepancy between the age stated on the certificate and the appellant’s date of birth concluding:

“On balance, I agree with the ECO that this casts reasonable doubt regarding the authenticity of the marriage certificate and the relationship of the Appellant and sponsor. I cannot be satisfied that the Appellant is a spouse, family member of a relevant EEA citizen because I find on balance the marriage certificate issued on the 07 July 2023 includes discrepancies.”

9. Contrary to the grounds it is clear that there was an apparent discrepancy as to age and what the judge considered that discrepancy to be. The grounds submit that the age given on the certificate:

“was correct on the day of our marriage. However, the Judge has concluded it wrong which is not understated able how it is incorrect. Here he was mistaken and made the error of law by calculating her age wrong and disregarding all the other supporting evidence.”

10. The judge’s calculation was that what was referred to in the marriage certificate at page 11 of the appellant’s bundle, but in fact entitled Marriage Registration Certificate shows the sponsor’s age at the date of marriage as 41 years, 6 months and 19 days but the previous marriage registration certificate had shown her age at the date of marriage as 41 years, six months and 18 days and the correction by the council was as to one day, changing 18 to 19 days. The sponsor’s date of birth is given as 20 April 1979 in her passport and there was no dispute about that date of birth. On the judge’s calculation, the age stated on the marriage certificate did not match her date of birth. The decision does not actually say what her own calculation is. At the appeal hearing before me, Mr Bates referred to an internet-based age calculation which calculated the sponsor’s age to be 41 years, 6 months and 18 days, which is consistent with the original marriage registration certificate. I made a similar internet search and found a different calculator which produced 41 years, 6 months and 19 days. My own ‘manual’ calculation also produces the age of 41 years, 6 months and 19 days. As she was born on 20 April 1979, she would have been 41 years and 6 months of age on 20 October 2020. There are eleven further days left in October and the marriage took place on 8 November, so that makes 19 days in total. The difference between the two dates depends on whether the first day is included in the calculation.

11. I accept that there may be some variation as to how one might calculate age and whether years, months and days are used rather than simply years or the number of days. I am not satisfied that there was in fact a discrepancy as the judge found at paragraph 11 of the decision. Even if there was a discrepancy, it is by one day and would have produced an age which was the same as that on the original marriage registration certificate. I cannot accept that there is such a discrepancy in either of these documents to justify having a reasonable doubt regarding the authenticity of the marriage certificate. Mr Bates reminded me that there was a discrepancy about the appellant’s age, which was corrected by the later application, but I also note that the concern of the respondent in relation to this case about the authorisation for making an alteration to the marriage

register has been addressed by the secretary of the Union Council. Whether or not this letter is reliable has not been raised but, even if it is unreliable, the original document has an age that was only one day different from the calculation in the second document. Given the differences in the way in which ages may be calculated, I am not satisfied that any discrepancy, if there is one, is significant or material.

12. In the circumstances, I am satisfied that the decision of the First-tier Tribunal is flawed for inadequate reasoning and, in my own view, by a miscalculation as to the sponsor's age. I am satisfied that the decision cannot stand and must be set aside to be remade.
13. I have canvassed with Mr Bates whether this is a matter that I can remake on the basis of the evidence as it is before the Tribunal. He did not oppose that course of action. For the reasons I have already outlined above, I am satisfied that the documentation is consistent with the claimed ages and dates of birth. Even if I am wrong as to that, and there is a discrepancy it is the discrepancy as to one day and the discrepancy can be explained by different ways of calculating a person's age. In the circumstances I am satisfied that the appellant's appeal should be allowed.

Notice of Decision

14. The appellant's appeal to the Upper Tribunal is allowed.
15. I set aside the decision of the First-tier Tribunal with no findings preserved.
16. I remake the decision of the appeal by allowing the appellant's appeal.
17. I make no order as to costs.

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 March 2024