



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

Appeal Numbers: EA/04052/2020
(UI-2021-000791)

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 20 May 2022**

**Decision & Reasons Promulgated
On the 23 August 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ENTRY CLEARANCE OFFICER

Appellant

AND

**MARIAMA SAIDY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Young, Senior Presenting Officer

For the Respondent: Ms Chaudhry, Counsel instructed on behalf of the appellant

DECISION AND REASONS

Introduction:

1. The Entry Clearance Officer appeals with permission against the decision of the First-tier Tribunal (Judge Turner) (hereinafter referred to as the "FtTJ") who allowed her appeal against the decision made to refuse her application for a family permit by reason of her marriage to her husband, a Spanish national exercising Treaty Rights in the UK in a decision promulgated on 20 September 2021.

2. The FtTJ did not make an anonymity order no application was made for such an order before the Upper Tribunal.
3. Whilst the appeal is brought by the Entry Clearance Officer, I intend to refer to the parties as they were before the First-tier Tribunal.

The background:

4. The background is set out in the decision of the FtTJ and the evidence in the bundle. The appellant is a national of Gambia. She stated that she married the sponsor, in 2002 whilst in Gambia.
5. The sponsor moved to Spain in 1999 and remained there until 2018 . Following this pre-settled status as an EEA national exercising his treaty rights in the UK. He is in full time employment in the UK .The Appellant and her husband have three children. The children are now in the UK with their father, and they also have pre-settled status.
6. In respect of her marriage the appellant has applied for entry clearance under the EEA Regulations on 2 previous occasions. Those applications were refused on the basis that the respondent did not accept that the marriage to her husband was valid.
7. The FtTJ set out the reasons given for the refusal of the 1st application on 30 August 2019. The application was refused on the basis that although the Home Office accepted that marriages in Gambia could be validly registered after the marriage had taken place, this is on the basis that a late fee was paid. The appellant had failed to produce requisite document from the court to evidence that the late fee had been paid. Thus it was not accepted the appellant to produce sufficient evidence of her marriage to the sponsor. The evidence has not been produced but the FtTJ noted that the sponsor recalled paying something of a late registration fee.
8. The Appellant then applied a second time for a family permit. A decision to refuse the application was taken by the Home Office on the 17th of December 2019. On this occasion there is no reference in the Reasons for Refusal letter to the late payment fee documentation. The Home Office refused that application on the basis that the original marriage certificate had not been produced as historical evidence of the marriage.
9. As a result of the earlier refusals, the Appellant and her husband re-married. It was stated that they were advised to do this by the Cadi Court in Bundung when she enquired about reissuing her marriage certificate. They re-married on the 9th of February 2020. Both were present at the ceremony. The Appellant then made a further application for entry clearance.

10. The latest application for entry clearance was refused on the basis that the signatures on the marriage certificate did not match the signature on the Appellant and Sponsor's passports.
11. The Respondent also submits that the Appellant has failed to evidence that she could legally remarry her husband if she had been married to him since 2002 as claimed. The FtTJ records the Appellant's evidence was that she was advised to do this by the Court to obtain a further marriage certificate.
12. As to the family circumstances of the parties, they have been in relationship since 2002 and have 3 children together. They remain in contact by telephone and the appellant is financially supported by the sponsor (her husband). She wishes to come to the UK to join a husband and children all of whom are in the UK.
13. There is no dispute that the sponsor is a Spanish national having evidenced this with a Spanish passport.
14. The respondent's position was that whilst the appellant had produced a marriage certificate to evidence that she is married to the sponsor, it was noted that the signature from the bride and groom on the marriage certificate does not appear to match that on the passport of the appellant and sponsor and therefore cast doubt upon the reliability of the marriage certificate and thus the relationship as claimed.
15. It was also noted that the Appellant has previously applied for entry clearance on the basis that she was married to her husband in 2002. She has however produced a marriage certificate to show that she and her husband married in February 2020. The Appellant has not produced any evidence to show that she could legally re-marry her husband. The FtTJ recorded that The Appellant had produced an affidavit from a notary public to confirm that the marriage was conducted correctly and in accordance with Muslim law however they did not have the legal powers to confirm the legality of the marital document. In the absence of any further evidence, the Respondent did not accept that the Appellant was related to her Sponsor as claimed.
16. The application for an EEA family permit was therefore refused on the basis that the Appellant did not meet all the requirements set out in Regulations 7 and 12 of the Regulations.
17. The appellant appealed and the appeal came before the FtT Judge Turner who heard evidence from the sponsor. In a decision promulgated on 20 September 2021 the FtTJ allowed her appeal having found that the appellant had demonstrated on the balance of probabilities that the parties were legally married and that as a consequence Regulation 7 was satisfied.

18. The FtTJ set out her conclusions at paragraphs [24]-[46]. It was agreed that the sole issue to determine was whether the appellant and the sponsor were legally married. The appellant having claimed to have married her husband in December 2002. The evidence before the judge (in witness statement and oral evidence) was that they had registered the marriage in 2010 but lost the original certificate.
19. When addressing the previous applications made, the FtTJ took into account that the basis of the refusal of 30 August 2019 was that whilst the Home Office accepted that marriages in Gambia could be validly registered after the marriage had taken place this was on the basis that a late fee was paid, and that the appellant failed to produce that document from the Cadi Court to evidence that a late fee had been paid. Thus it was not accepted that the appellant had provided sufficient evidence of her marriage to the sponsor. In this respect the judge noted that the evidence of the sponsor was that he recalled paying a late registration fee although the evidence had not been produced. As to the 2nd refusal dated 17th of December 2019, the FtTJ observed that the reasons for the refusal on this occasion made no reference to the late payment fee documentation but refused the application on the basis that the original marriage certificate has not been produced as historical evidence of the marriage. The judge made a finding "this appears inconsistent with the earlier decision that the Home Office accepted that valid marriages could be registered on a later occasion in Gambia" and in relation to the 1st refusal the judge found "the earlier decision made no reference to the need for the original marriage certificate".
20. The FtTJ found that following that decision the parties made enquiries of the Cadi Court as to whether they could obtain a new marriage certificate or other form of evidence as proof of their marriage in 2002. The evidence before the FtTJ was recorded in that the sponsor had explained in his witness statement and oral evidence of the court held no records of marriages that took place as long ago as 2002 and for that reason the court could not assist. The sponsor's evidence was that the court advised them to enter a 2nd marriage to enable them to obtain the necessary documentation. They followed that advice and produced the resultant marriage certificate.
21. The FtTJ addressed the evidence relating to the marriage that took place in 2002. Judge Turner took into account that she had been provided with a marriage registration document (pages 37-38 of the bundle) and further recorded that the original marriage certificate was no longer available.
22. The FtTJ set out the points made on behalf of the respondent at the hearing in relation to this issue which the presenting officer suggested created doubt as to the reliability of this document. He highlighted that the groom was resident in Tankanto. It is recorded that "he suggested that as far as he was aware, this was in Senegal. Ms

Chaudhry pointed out that this point had not been put the sponsor to enable him to provide an explanation about this and should not be held against him. I agree with this submission. Tankanto may be in Senegal. Alternatively, they may be another area also named Tankanto, perhaps in Gambia. I do not hold this point against the appellant.”

23. The 2nd point recorded by the judge was that there was no reference on the registration document to the fact that the marriage was a proxy marriage. The sponsor’s evidence was that he was in Spain when the 1st marriage took place by proxy. In answer to this submission, the judge stated “ I note that the 2010 document has no place in which to insert this information. It does record a named witness at the bottom which may well be the proxy. I consider that the purpose of the document is to certify that a valid marriage took place but not necessarily for the purpose of providing more detailed information. I do not see anywhere on the document to suggest that the sponsor was present at the marriage which would conflict with his evidence. I do not consider that this undermines the appellant’s claim.”
24. The FtTJ stated that she considered the marriage registration document in line with the decision in Tanveer Ahmed [2002] UKIAT 00439 and whether she could rely on the document taking the evidence “in the round”.
25. The FtTJ concluded that in relation to the registration document from 2010 relating to the marriage in 2002 she had seen no evidence that contradicted the appellant’s claim that she had entered a legally valid Islamic marriage with her sponsor in 2002. The FtTJ stated “It does not appear from the submissions made by the Respondent that there is any allegation of forgery. The Respondent’s position is simply that I must question whether I can rely on the content. In any event, noting RP (proof of forgery) Nigeria [2006] UKIAT 00086, the Respondent produced no such evidence of forgery.”
26. The FtTJ found that “In isolation, it appears, taking the evidence in the round that the above registration of the marriage document could be relied upon.”
27. The FtTJ then addressed the second marriage. “However, the Appellant’s case was complicated by the fact that she and her husband then went on to marry a second time in 2020. This, the Respondent submits, indicates that the first marriage may well have been invalid or alternatively suggests that the second marriage cannot be valid.
28. In this respect the FtTJ recorded the presenting Officer’s submission on the 2nd marriage certificate and referred the judge to the noted

residence of the sponsor, which again had not been put to the sponsor to address.

29. The 2nd point raised was that “He noted that the Appellant was recorded as a ‘spinster’”. The FtTJ addressed this point as follows “The form gives limited options in this regard. The options allow for the bride to be described as divorced or widowed. Neither of these options apply. It is not reasonably likely that the person conducting the marriage would record that the marriage is taking place to enable the parties to obtain a new marriage certificate. The Sponsor had not died. It is unlikely for religious or other reasons that either party would wish to be noted as divorced. Therefore ‘spinster’ is the most appropriate form of wording.
30. A further finding made by the FtTJ was “I note that the certificate was signed by both parties which is consistent with the Sponsor’s oral evidence that he was present for the marriage on the second occasion.”
31. The FtTJ also addressed the basis of the refusal and that the respondent questioned whether the signatures on the passport and the marriage certificate were made by the same people.
32. The FtTJ made the following finding:

“I have considered these signatures and cannot see that there are sufficient differences in them to call them into question. I would presume that the signatures on the passports at pages 12 and 13 are digital signatures which can also cause some changes to occur. I do not consider that there is sufficient evidence to the requisite standard to prove that the signatures on the marriage certificate are not from the Appellant and Sponsor.

Again, on the face of it, the marriage certificate from 2020 appears to be reliable and consistent with the witness statement and oral evidence of the Sponsor”.
33. The FtTJ accepted that the Appellant had failed to produce any objective evidence about the validity of the second marriage or the laws in Gambia to demonstrate that this marriage was permitted and valid. The FtTJ stated “That is not to say that this was not permitted. I therefore must consider the remaining evidence in the round.”
34. The FtTJ took into account that the Appellant and Sponsor had three children together and recorded that the birth certificates and passports had been produced for all three children which named the Appellant and Sponsor as the biological parents. The Respondent had not taken issue with any of these documents.
35. The FtTJ recorded the submission made by Ms Chaudhry which the FtTJ noted the Sponsor highlighted in evidence, that the Appellant and Sponsor would not have been permitted to have children under

Islamic rules if they were not married. The children were born in 2005, 2007 and 2010. The FtTJ found that she had been provided with evidence of the children's passports and birth certificates noting the Appellant and Sponsor as the biological parents which coincided with the Appellant's overall claim of marriage in 2002 (at [44]).

36. The conclusion reached by the FtTJ is as follows:

“Having considered all the above, I have seen no real evidence to doubt the validity of either marriages between the Appellant and Sponsor. It is either the case that the first marriage was valid and the second marriage which took place was also permitted by Gambian law on the advice of the Court. Alternatively, the first marriage was valid and the second is invalid. The third option is that the first marriage was invalid, but the second marriage has legalised the relationship, something highly unlikely given the Appellant's faith and the fact that she has children with the Sponsor.

On balance, I consider the most likely position is that the first marriage was valid and continues to be so. Overall, I am persuaded that the Appellant and Sponsor are legally married for the purpose of Regulation 7. Based on my findings above, I conclude that the Appellant is married to her Sponsor”(at [44-45].

37. The FtTJ therefore allowed the appeal. Permission to appeal the decision was sought.

38. Permission to appeal was issued and on 25 October 2021 permission was granted by Designated Judge Shaerf.

The hearing before the Upper Tribunal:

39. The Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined as a face-to-face hearing. Subsequently, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

40. The hearing before the Upper Tribunal took place on 20 May 2022. Ms Young Senior Presenting Officer appeared on behalf of the ECO and Ms Chaudhry Counsel appeared on behalf of the appellant.

41. In the oral submissions Ms Young stated that she acknowledged the limitations in the written grounds of challenge. In particular, ground one referred to a point taken that the judge failed to take into account the Presenting Officer's submission about residence in Spain. However Ms Young stated that she was not advancing that submission as it was not put in cross examination as recorded in the decision of the FtTJ.

42. She submitted the ground relied upon was that the FtTJ failed to resolve the issue between the parties as to whether someone in the

position of the appellant could marry twice if already legally married. At paragraph 41, there was no evidence to show that the marriage was valid or permitted. Whilst the judge found that the 1st marriage was valid, to make that finding the judge would have to address a 2nd marriage and whether that was valid. The judge failed to deal with this or resolve that issue it was material to the central issue of whether the parties were married and satisfied regulation 7.

43. Ms Young further submitted that the issues raised in the decision letter were not resolved by the FtTJ and therefore it was not open to say that they were married. The judge was required to make a finding on the 2nd certificate and whether it was valid and if so the reasons why it was valid and how that they were able to marry. As a result the decision of the FtTJ should be set aside.
44. There was no rule 24 sponsor behalf of the appellant. Ms Chaudhry on behalf of the appellant submitted that there was no error of law in the decision of the FtTJ. She submitted that all the findings made in relation to the 1st marriage was that the marriage was valid and there was a clear finding made in terms of the 2nd marriage. At paragraph 40, the 2nd marriage certificate was reliable and paragraph 28 the judge set out the reasons why the court had advised the appellant sponsor to carry out 2nd marriage therefore the assessment was carried out alongside the oral evidence that the court in Gambia was permitted to carry out 2nd marriage. It was not the case that the 1st marriage was invalid. Paragraph 28 recorded the court had no record of the 1st marriage and therefore advised the parties to proceed with the 2nd marriage which is why the judge found both marriages to be valid. The court deemed them free to marry on the 2nd occasion and therefore there was no error made by the FtTJ.
45. Contrary to the submissions, Judge Turner resolved all issues by explaining there was no background evidence to rely on relating to marriages in Gambia, but she looked at the other evidence noting that there were 3 children and given that the marriage was under Islamic law it followed that such a marriage should not be permitted and to go on to have children if they were not valid and legally married. Thus the court in Gambia accepted that they were married, and the findings made by the judge were that both marriages were valid.
46. Ms Chaudhry therefore submitted the grounds were not made out.
47. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

48. The Immigration (European Economic Area) Regulations 2016 have now been revoked by The Immigration and Social Security Co-

ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020. Revocation, however, has effect subject to savings specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").

49. Schedule 3 paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals and as this appeal was extant prior to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal.
50. The written grounds submitted on behalf of the respondent were not relied upon in their entirety by Ms Young who in her submissions acknowledged what she described as "the limitations" in those grounds. For example, one of the grounds (paragraph 1) asserts that the judge had failed to take into a point raised by the presenting officer concerning residence in Spain. However the judge dealt with those issues at paragraphs [31] and [36] and on both occasions recorded that the presenting officer had not put either of those issues to the sponsor in cross examination. This was accepted by Ms Young. Furthermore, paragraph 2 of the written grounds asserts that the judge failed to note that legal documents can be obtained based on information provided by individuals, and this did not give them evidential weight without confirmation from an official source. Again, it does not appear from the decision and the submissions made that this was a point ever put before the FtTJ to consider nor did the grounds identify what evidence there had been to support that assertion.
51. The written grounds also refer to the judge concentrating on the signatures (see paragraph [39] of the decision). However, this ground is not a fair criticism of the FtTJ's decision. The judge resolved the issue as to the signatures on the documents because it was an issue expressly raised by the respondent in the decision letter.
52. The point advanced by Ms Young on behalf of the respondent was that the judge had failed to resolve the issue as to whether someone in the position of the appellant could marry twice if already legally married. It is therefore submitted that the judge failed to resolve that issue and it was central to the overall issue of whether the parties were married and satisfied Regulation 7.
53. By way of reply, Ms Chaudhry, who represented the appellant before the FTT, submitted that there was no error in the decision and that the judge had found the 1st marriage to have been valid and also made a clear finding in relation to the 2nd marriage. She submitted the judge had found the 2nd marriage certificate to be reliable and at

paragraph [28] set out the reasons why the court had advised the appellant to carry out 2nd marriage and therefore the judge's assessment had properly been made on the evidence.

54. Having considered the grounds as now argued by Ms Young and the submissions of Ms Chaudhury, I do not find that the grounds are made out for the reasons set out below.
55. The FtT identified at paragraph [24] that the sole issue to be determined was that of whether the parties were legally married. When addressing this issue there was no error in the FtT's approach to considering the documents and their reliability in line with the decision of Tanveer Ahmed for the reasons the judge gave that the respondent did not make any allegation that the documents were forged but that the respondent's position was whether the judge could rely on the contents of the documents (see paragraphs [30] and [33] of the FtT's decision).
56. In relation to the marriage the parties stated that they had entered into in 2002, the judge addressed the submissions made by the presenting officer which related to the reliability of that document (see submission made at [[30]). At [31] the judge noted the issue raised as to residence in the submissions but that this had not been put to the sponsor during cross examination. At [32] the judge resolved the issue concerning the contents of the documents in favour of the appellant and the sponsor and at [33]-[34] the FtT, having directed herself to the decision in Tanveer Ahmed made a finding that "there was no evidence that contradicted the appellant's claims that she entered into a legally valid marriage with the sponsor in 2002" and thus taking the evidence "in the round", the document could be given weight.
57. The judge then went on to address the 2nd point raised by the respondent relating to the 2nd marriage in 2020 (see [35]). In relation to that issue the FtT again address the submissions that were advanced by the presenting officer which were based on the reliability of that document. At paragraphs [36]-[39] the FtT resolved those issues in favour of the appellant and the sponsor having found that the recording of the word "spinster" was consistent with the contents of the document and the evidence for the reasons the judge gave at [37]. At [38] the FtT noted that the certificate was signed by both parties which the judge found to be consistent with the sponsor's oral evidence and at [39] rejected the point made in the decision letter and the submissions of the PO concerning the issue of the signatures on the documents. The judge therefore concluded that the marriage certificate from 2020 was "reliable and consistent with the witness statement and oral evidence of the sponsor". Whilst the judge observed that there was no objective evidence about the validity of the 2nd marriage, the judge found "that is not to say that this was not permitted" and then went on to state reasons why she considered the

other available evidence was reliable evidence when taken together and “in the round”. The judge proceeded to assess the documentary evidence from the Gambian authorities in the form of birth certificates and passports for the 3 children born in 2005, 2007 and 2011. Having considered that evidence at paragraphs [42 - 44] the judge found that those documents supported and were consistent with the marriage having taken place in 2002. The judge observed that those documents were not challenged by the respondent.

58. Against that evidential backdrop the judge set out her conclusions at paragraphs [45]-[46.] Whilst Ms Young and to some extent Ms Chaudhury referred to the reasoning of the FtTJ in respect of the 2nd marriage based on the 1st part of paragraph [45] where the judge having considered the evidence stated, “I have seen no real evidence to doubt the validity of either marriage”, the judge in fact reached the conclusion that it was the first marriage which was valid and continued to be so (at [46]).
59. Having looked at the decision, the FtTJ had set out her reasoning in relation to the 1st marriage in 2002 and the marriage certificate provided and found that it was later accepted by the respondent that marriage certificates could be registered after the marriage taken place (for the reasons contained in an earlier refusal) and that the sponsor had made reference to the late payment, the judge having referred to the sponsor’s evidence that he had recalled paying a fee for this. The judge considered the reliability of the document provided and found this to be a reliable document having address the submissions made by the presenting officer between paragraphs[30]-[34] . At paragraphs [42]-[44] the judge addressed the document evidence provided relating to the children and their documents which she found were official documents and not challenged by the respondent and concluded that those documents supported and were consistent with the claim of being married in 2002.
60. Therefore, whilst the respondent takes issue with the 2nd marriage, the factual findings made by the FtTJ by taking the evidence together and “in the round” was that the first marriage was valid and continued to be so finding that the 3rd option she had identified, that the 1st marriage was invalid and the 2nd marriage legalised the relationship, was one that was “highly unlikely” given the appellant’s faith and the fact that she had children with the sponsor. This was a finding reasonably open to the judge to make on the evidence before her. The judge considered the evidence taken together and “in the round” and addressed the submissions made by the respondent which were on the basis of the reliability of the documents. She was entitled to place weight on the evidence of the sponsor which she had the advantage of hearing and apart from the issue set out at [44] found his evidence to be consistent with the documentary evidence and reliable evidence which she accepted on the issue of the marriage and the relationship between the parties. In particular given the

presence of the children, that the parties would not have been permitted to have children under Islamic rules if they were not married. It was therefore open to the FtTJ to reach the conclusion that she accepted the evidence as reliable and of carrying weight to demonstrate that the parties were married and thus they met Regulation 7.

61. For those reasons, it has not been demonstrated that the decision of the FtTJ involved the making of an error of law and therefore the decision of the FtTJ shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law, the decision shall stand.

Signed Upper Tribunal Judge Reeds

Dated: 5 July 2022