



Upper Tribunal

**(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-002911
EA/06524/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 9th November 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

Between

**SAJID KALU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr R Solomon instructed by Woolfe & Co Solicitors.

For the Respondent: Mr S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 8th March 2022, First-tier Tribunal (“FtT”) Judge Row (“the judge”) dismissed the appellant’s appeal against the Entry Clearance Officer’s (“ECO”) decision dated 13th March 2021, which refused the appellant’s application for a family permit made under regulation 8 of the Immigration (European Economic Area) Regulations

2016. The appellant had applied as the extended family member of Mr Asif Muhammad Begum (“the sponsor”), who is said to be his uncle a Spanish national exercising treaty rights.

2. The thrust of the ECO’s refusal was that the Appellant failed to show that he was related to his sponsor as a brother, because the appellant had not produced ‘valid evidence’ of the relationship. The ECO considered the birth certificates of the appellant and sponsor and the NADRA family certificate. The birth certificates were rejected because of the delay in registration between the births of the appellant and sponsor and the dates of the certificates. In the absence of ‘any other documentation’ that supported the appellant’s parentage, the ECO was not satisfied that the relationship was as stated.
3. In the evidence before the judge was documentation which included transfer remittances, property deeds of the sponsor’s home where the appellant lived in Pakistan, witness statements of the appellant and sponsor, a certificate of the Ghiyas ud Din Khan (Ex-Nazim) and Ch. Muhammad Sadiq (Numberdar) confirming they were brothers, and documents from their claimed father asserting the relationship.
4. The grounds of appeal to the FtT referred to and contained within the appellant’s bundle, the Result Intimation Card provided by The University of the Punjab with the appellant’s details, a sworn Affidavit by Chairman Muhammad Sadiq Numberdar Chainwali certifying that the sponsor and appellant are the sons of Kalu Khan, (ie they had same father), a sworn Affidavit by the Union Council Dhillanwali confirming that an application had been successfully submitted to the Tehsil Sadar District Gujranwala Union Council Dhillanwala No. 119 to officially register the Sponsor and Appellant as sons of Kalu Khan and a sworn Affidavit by Union Council No. 119 confirming the same. This Affidavit includes both the sponsor’s and appellant’s full names, their father’s, grandfather’s, and mother’s name, as well as their date of birth. This has been entered in the Tehsil & District Gujranwala Union Council according to Pakistani Law.
5. The appellant’s challenge to the judge’s decision was made on the following grounds:
 - (i) he failed to reach adequate or any findings on the written and oral evidence of the sponsor or the written evidence of the appellant. He failed to give adequate reasons for rejecting the sponsor’s evidence
 - (ii) he failed to consider the relevant documentary evidence filed with the First-tier Tribunal which included the evidence on dependency which was probative of the relationship, and which included utility bills and Land Registry documentation;
 - (iii) he failed to engage with the explanations for the delay in registration of documentation, the discrepancy in the family

documents and the absence of a bank account and thus failed to give reasons for rejecting the same and further that some of the findings were speculative.

(iv) in sum, he failed to consider the evidence in the round when finding the appellant and sponsor were not related.

2. Permission to appeal was granted on the basis that it was arguable that the judge's findings were not clear with regard the documentary and oral evidence and, that the finding at [19] [on what the documents were based] was arguably speculative without evidence. Further the judge had failed to make clear finding that little weight could be given to the family registration certificate.
3. At the hearing before us, Mr Solomon expanded on his written grounds and emphasised that the judge had failed to address key elements of the appeal including the appellant's own evidence. Ms Cunha submitted that although the decision might be more detailed and better formulated the decision was adequate overall. She submitted that the judge found there was insufficient evidence to demonstrate the relationship.

Analysis.

4. The structure of the decision did not assist in defining which were the findings of the judge, which were merely the reasons for refusal letter and which elements of that refusal letter had been adopted, and for what reason. The references to the respondent's letter were included, without clear delineation, under the heading 'Consideration of Evidence and Findings'. In sum, it was difficult to identify which were the actual findings of the judge.
5. We acknowledge that the judge at [8] set out that the sponsor's evidence was that the appellant was his brother but there was no identifiable reference to the sponsor's oral evidence, or why this was rejected. From [8]-[11] under 'Consideration', was a recitation of some of the evidence. At [11], the judge merely stated '*There is evidence of money transfer into the name of the appellant from the sponsor from 2016 up to the present. That may be evidence of dependency. It may not be*'. There was no finding on dependency because the judge concluded that he needed to address the relationship first. Mr Solomon made criticism of this lacuna. We return to this point below.
6. Paragraphs [12] to [16] appeared to be a description of the ECO's decision. From [17], the judge resumed the analysis of the documentation particularly the two family registration documents commenting that they were different; this discrepancy appeared to be central to the judge's finding of inadequacy of evidence at [17] -[18] but nowhere was this recorded as being put to the sponsor. Mr Solomon submitted that both documents in fact included the key members of the family and thus was not undermining as claimed.

7. We note that the judge did address the educational documents which named the appellant's father as Kalu Khan but made no finding as to the weight to be attached to the document when stating that they '*named his father as Kalu Khan*' but merely added opaquely '*this may be the case. The issue was whether he was the father of the sponsor*'. Nor was it clear what weight was attached to further documents when the judge merely stated, '*the sponsor's passport indicated that his father was Kalu Khan as did an ID document*' and then added '*these are comparatively recent documents which are likely to have been based upon the birth certificate registered in 2004*'. It was not clear upon what evidence that statement was based and moreover was speculative.
8. The judge made no reference to the official documents confirming the relationship such as the certificate of Ghiyas ud Din Kahn and Ch, Muhammad Sadiq. Nor was there reference to the affidavit from the father. Although Ms Cunha made the point that the judge did not go so far to find that *false* documentation was provided but that the documentation was insufficient, this observation, in fact reinforced the objection to the decision which was that the Judge failed to take into account all relevant material.
9. We consider that the judge appeared to focus on the absence of DNA evidence and scrutinised the evidence produced through that lens. Despite recording at [20] that the appellant considered he had provided sufficient material without providing DNA evidence the judge simply brushed over this at [22] when finding that the appellant had '*almost a year*' to secure DNA and viewed the absence and the rest of the evidence with scepticism.
10. The judge observed at [21] that the ECO had raised the issue of the relationship and then stated: '*documents prepared such a long time after could give rise to the suspicion that they have been obtained in order to provide evidence of a relationship where none existed*', the suggestion being the documents had been provided to show evidence of the relationship for the application. In this observation however, the judge (a) did not make a firm finding and (b) did not take account of the fact that the documents predated the application by a number of years.
11. Nor at this point did the judge engage with the explanations of the appellant and the sponsor (see the witness statements at paragraph 21) that documents are only sought when required. This underlined the contention that the judge failed to engage fully with the evidence. There is no reference to the sponsor's oral evidence in the decision. There is no reference to the appellant's witness statement, which we acknowledge was brief and appeared to be mere confirmation that he was related as claimed to his brother, but this statement also explained the delay in the registration of the documentation which was not addressed.
12. Finally, there were no findings on dependency which Mr Solomon submitted could be probative of the relationship. Although we were not

wholly persuaded by this challenge particularly as the appellant lived in a house with other people in Pakistan, in the light of our findings above, we need take this matter no further.

13. The weight to be afforded to the evidence is a matter for the judge but he must take into account all relevant evidence. Each point in relation to the error may not be material in itself but cumulatively, we consider that there is a material error in the decision owing to the absence of consideration of relevant evidence as outlined above.
14. We conclude therefore that there was a material error in the consideration of the appellant's appeal. We set aside the decision. Owing to the nature and extent of the findings to be made the matter should be returned to the First-tier Tribunal for a hearing de novo.
15. Although not part of our decision, and we refused to consider this evidence when addressing the error of law, we record that Ms Cunha accepted that the DNA evidence, now said to be available to show that the appellant was the brother of the appellant, should be admitted before the First-tier Tribunal.

Notice of Decision

16. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Directions

17. All further evidence should be filed (including the DNA evidence) and served at least 14 days before any substantive hearing in the First-tier Tribunal.

Signed Helen Rimington
2022

Date 14th November

Upper Tribunal Judge Rimington