



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005032
First-tier Tribunal No:
[EA/03560/2022]

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 April 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

Ms Matilda Aboagye
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr D Balroop, Counsel instructed by Wisemart Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 2 March 2023

DECISION AND REASONS

1. These written reasons reflect the oral reasons, which we gave at the end of the hearing.
2. The appeal is against the decision of First-tier Tribunal Judge J G Raymond, (the 'FtT') promulgated on 10th August 2022. The FtT had in turn considered the appellant's appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2022 of the respondent's refusal on 10th March 2022 of her application, made on the 23rd June 2021, for an EU Family Permit. She relied on her customary marriage on 19th May 2019 to her sponsoring EEA national (Swedish) husband, said to be exercising treaty rights in the UK. The FtT dismissed the appellant's appeal.
3. In his decision, at §1, the FtT noted that the couple claimed to have married in a Ghanaian customary marriage, at which they were not present, but were represented by relatives. They also relied on evidence said to show the couple's cohabitation in the UK, including utility bills, bank statements, employment

payslips, and photographs. At §2, the FtT observed that the respondent had refused the appellant's application because the couple had been invited to attend three interviews for an assessment of the application, which they had failed to attend. Firstly, on 7th September 2020 an invitation was sent for an interview on 25th September 2020 at London, Hounslow. The FtT's reasons continued:

"There being no response a further invitation was sent on 11 September 2020 to attend on 30 September at London Hounslow and – 'This invitation was declined as your representative advised that you were isolating'. A third invitation was sent on 18 September 2020 for attendance on 12 October 2020, but – 'Your later advised you and your EEA sponsor will not be in attendance to this interview for personal reasons'. As a result, it was decided that there had not been submitted evidence sufficient to establish that there was a subsisting relationship between the couple, for the appellant to qualify for settled status as the family member of a relevant EEA citizen. "

4. The FtT noted, at §3, the appellant's explanation, in which she sought to blame the couple's failure to attend three interviews on representatives not having properly apprised the respondent at the relevant time that they could not attend as a couple because the sponsor was caught by the COVID lockdown on international travel in Ghana, being unable to travel back to the UK. The sponsor "would seem to speak for them both" in his witness statement, the gist of which was that the respondent had not taken into account the reason for the couple not being able to attend. The sponsor had been in Ghana during the time when the interviews were scheduled. The couple had informed their legal representatives and only later learnt that the legal representative did not fully explain the situation to the decision maker. As a consequence, the couple had instructed new legal representatives who submitted the second application on 23rd June 2021. As the FtT noted, the appellant complained that the couple had not been invited to a fourth interview on this occasion and indeed had they done so they would have attended.
5. We cite §4 of the FtT's decision, as this is one the key passages challenged by the appellant:

"However, the appellant would seem to confirm that the sponsor is speaking of an earlier and different application when she says in her statement of 04.07.22 [§7-14] that they had instructed a solicitor to act in the application submitted on 07.11.19 and they – "were invited to attend interviews in relation to this application, but we were unable to attend those interviews". (It is not apparent how the interviews could relate to an application made on 07.11.19). She goes on to state that as regards the 18 September 2020 interview her husband was stuck in Ghana because of Covid international travel restrictions, and for the same reason they could not attend the second and third interviews, their representatives having given them the assurance that their interviews had been cancelled because of their difficulties. She adds – "It was not until we received the refusal letter via email that we saw that the previous legal representatives had not accurately informed the Home Office about our situation. My husband and I made every effort to make sure that the lawyers were aware of the travel difficulties that we were having, and we were shocked and angry to find that the information had not been relayed correctly to the Home Office. Once we found out my husband and I withdrew our instruction from them

immediately and found new representation". She adds that it is not their fault their "previous representative" did not properly explain their reasons for non-attendance to the respondent. If they were invited to further interviews they would attend because they are a genuine couple and love each other."

6. At §5, the FtT considered evidence in relation to aeroplane tickets; oral evidence at §6, and reminded himself of the law, as to which there has been no challenge, at §7. At §8, the FtT made findings, where he did not accept the appellant's attempt to blame her former solicitors, in circumstances where there was no evidence of any complaint about them. The FtT was concerned that the appellant and the sponsor were "sowing confusion" as to whether those same representatives had acted in the earlier application and not in the present one, but in any event, the FtT was concerned that the sponsor had only explained in oral evidence that he was in Ghana because of the death of his grandfather, which gave the appearance of evidence made up on the spot. The FtT concluded that the couple had deliberately attempted to avoid being interviewed. The FtT went on to dismiss the appeal under Appendix EU.

The Grounds of Appeal and the Grant of Permission

7. Mr Balroop asked us to point out that he did not draft the grounds of appeal. This is because he had sought to rely before us on an entirely new ground, in respect of which no permission had been granted and which we refused. We discuss this later in these reasons.
8. In the application for permission to appeal, the appellant submitted that the FtT had erred at §4 in confusing two separate applications - the interviews had related to an earlier application, while the couple were never invited for interview in their application, the refusal of which they were appealing. The FtT had made a mistake of fact, which was illustrated by the FtT's confusion in §4, where he referred to it being "not apparent" how interviews in 2020 could relate to an application made in November 2019, when the interviews related to the earlier application. The FtT had also erred in criticising the appellant for failing to adduce evidence of complaints about her former solicitor. At no point had the appellant been asked in the FtT hearing about who her former solicitors were, and it was incumbent on the FtT to have asked the appellant, if he had concerns.
9. Judge Monaghan of the First-tier Tribunal granted permission on all grounds on 27th September 2022. The grant of permission was not limited in its scope.

The Hearing before us

The appellant's adjournment application

10. Mr Balroop began by making submissions to the effect that Appendix EU(FP) did not permit a refusal of a family permit, solely on the ground that an applicant has failed to attend an interview. When we canvassed with him whether this was a new issue, he accepted that it was not in the grounds on which permission had been granted. He also had no instructions that the argument had been made to the FtT by the appellant's then legal representative. He accepted that it was not appropriate for him to make an amendment application orally, with no notice, and sought an adjournment so that a proper application could be made. We refused that application. We bore in mind the need for procedural rigour and considered whether, in refusing to adjourn, the appellant would be deprived of the opportunity to participate in a fair hearing. We concluded that she would

not. Without criticism of Mr Balroop, who had not appeared below, or drafted the grounds, he had spotted a new legal point, not previously argued, that he believed had better prospects of success. That is not the proper basis for us, an appellate Tribunal, to adjourn, when there is no suggestion that the argument was pursued before the FtT, and the FtT had erred in rejecting that argument. Mr Balroop's argument was not one which was "Robinson obvious" (R (Robinson) v SSHD [1998] QB 929; [1997] Imm AR 568). We proceeded to consider the remainder of the grounds.

11. We do not recite each of the parties' submissions, except where to explain why we have reached the decision we have. We accept Mr Balroop's submission that a mistake of fact is material, if it is material to the decision maker's conclusion (see §16 of ML (Nigeria) v SSHD [2013] EWCA Civ 844). We also accept his submission that if there is any doubt as to whether a mistake was material, that should be resolved in the appellant's favour. Mr Balroop reiterated what he says was the mistake, in §4 of the FtT's decision, coupled with the FtT's failure to consider the extensive evidence of cohabitation.
12. We accepted Mr Melvin's submission that the FtT did not make a mistake of fact and that we must avoid the risk of "island-hopping" between specific passages of evidence (see Joseph (permission to appeal requirements) [2022] UKUT 00218 (IAC)). The FtT was conscious of the fact of two applications, specifically citing the sponsor's explanation at §3 of his reasons. The respondent had refused the application based on non-attendance at interviews in connection with the earlier application, which the FtT had cited at §2. While, in retrospect, the reason for the delay between the November 2019 application and the September/October 2020 interviews might be said to be obvious, namely the Covid pandemic, that does not demonstrate that the FtT proceeded on a mistake of fact that the couple had been invited to interviews in relation to their current application. The FtT considered the respondent's decision, which had made clear the two separate applications, and which had refused the second application based on the failures to attend interviews in connection with the first application. The FtT had considered at §8 that there was no email evidence of the sponsor being stuck in Ghana, which could readily have been produced, had this been the genuine explanation for not attending interviews.
13. The FtT had also noted at §8 that there was no documentation of any complaint about the appellant's former solicitors, Londinium Solicitors. We accept Mr Melvin's submission that a legally represented party can be expected to adduce evidence of a formal complaint, where they seek to criticise a former professional advisor for defaults, which might otherwise be explicable by their own lack of credibility. The FtT did not err in failing to question the appellant on this issue, of his own motion. He was entitled to assess the explanation and reach the conclusion that he did, on the evidence. The FtT also made specific reference to the evidence of cohabitation, but was entitled to focus on the couple's failure to attend interviews, and what he regarded as oral evidence made up on the spot.
14. In summary, we do not accept that the FtT erred in law in making his decision.

Notice of Decision

15. **The FtT did not err in law in making of his decision. The FtT's decision stands.**
16. **The appellant's appeal is dismissed.**

17. **No anonymity direction is made.**

J Keith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th March 2023