



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001769
First-tier Tribunal No: EA/03440/2021
Case No: UI-2021-001770
First-tier Tribunal No: EA/03444/2021
Case No: UI-2021-00171
First-tier Tribunal No: EA/03443/2021
Case No: UI-2021-001772
First-tier Tribunal No: EA/03446/2021
Case No: UI-2021-001773
First-tier Tribunal No: EA/03447/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 September 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**SAMUEL DELE AIGBOGUN
NENE CLEMENTINA AIGBOGUN
PRECIOUS DAMILOLA AIGBOGUN
DAVIS OSARIEMEN AIGBOGUN
ANTHONY BABALOLA AIGBOGUN**

(NO ANONYMITY ORDERS MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O Atuegbe, Solicitor at RA Solicitors Ltd
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 4 September 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were occasional difficulties with the video connection to the Appellants' solicitors, but anything missed was repeated without difficulty. The papers were all available electronically.
2. An error of law was found in the decision of First-tier Tribunal Judge McTaggart promulgated on 24 November 2021 for the reasons given in the error of law decision annexed such that that decision was set aside. This is the re-making of these appeals against the Respondent's refusals of the Appellants' applications for EEA Family Permits under the Immigration (European Economic Area) Regulations 2016, on the issue of whether the Appellants would become a burden on the public funds system in the United Kingdom after arrival.
3. The Appellants are all nationals of Nigeria, comprising of husband, wife and their three minor children; in respect of whom materially identical decisions were made for the following reasons. First, there was no evidence of the Appellants' circumstances such as income, expenditure or any employment. Secondly, there was nothing to demonstrate that the money transferred by the Sponsor paid for essential needs such rent and food; such that dependency was not established. Thirdly, there was insufficient evidence that the Sponsor, in receipt of state benefits due to her low income and with a relatively low bank balance, would be able to support all of the Appellants in the United Kingdom without them becoming a burden on public funds.
4. Judge McTaggart found that there was no issue as to the relationship between the Appellants and the Sponsor or as to the status of the Sponsor as an EEA national exercising treat rights in the United Kingdom and in the absence of any evidence to the contrary, the Appellants were all solely reliant on financial remittances from the Sponsor to meet all of their essential living needs such that they were 'extended family members' under Regulation 8 of the Immigration (European Economic Area) Regulations 2016. The additional reason for refusal that the Sponsor would not be able to support all of the Appellants in the United Kingdom without them being a burden on public funds was not addressed and it is this issue to be determined in the remaking of the appeal, the other matters not having been challenged by the Respondent as containing any error of law.
5. The appeals should have been able to have been remade at the previous hearing in the Upper Tribunal in accordance with directions given beforehand, but the hearing was adjourned in light of submissions on behalf of the Appellants that the Sponsor's circumstances had changed and the first Appellant had been offered employment in the United Kingdom. However, no further evidence was filed in accordance with directions, such that the majority of the evidence before the Upper Tribunal was significantly out of date (having been filed with the original applications made in December 2020 and what was before the First-tier Tribunal for hearing in November 2021). The additional documents available as at the last hearing before the Upper Tribunal included a written statement from the First Appellant and the Sponsor, a letter from 1st Call Business Services Limited and various bank statements of the Sponsor. The Appellant's solicitors should not have requested a further hearing in order to file further evidence in circumstances where no such documents were then submitted, it has wasted court time and ultimately delayed a decision on the appeals for the Appellants.

The evidence

6. At the time of the applications for EEA Family Permits as extended family members under Regulation 8 of the Immigration (European Economic Area) Regulations 2016, the Appellants stated that they were solely dependent on the Sponsor, the First Appellant's sister, an Italian national exercising treaty rights in the United Kingdom and who provided £150 per month in financial support. At that time, the Sponsor was employed by Vestacare UK Ltd for 30 hours per week at an hourly rate of £9.72 and a copy of her contract of employment was submitted with the application; as were payslips for July to October 2020 and a bank statement from December 2020. The application also included six money transfer receipts dated between November 2019 and June 2020 for amounts ranging between £10 and £1234 (totalling £1523).
7. Three further money transfer receipts dated April, June and July (presumably 2021 but the full date is not shown) were submitted to the First-tier Tribunal. The amounts shown were not in pound sterling, but on current exchange rates totalled around £190.
8. There is a written statement from the First Appellant, signed and dated 9 May 2023 in which he stated that he expects to work in the United Kingdom to contribute to the family income and had had a telephone interview on 27 March 2023 with a recruitment agency for the job of a caretaker and would also be available to do menial jobs if needed. The First Appellant expected the Sponsor to also return to full-time employment after the Appellants arrival in the United Kingdom and did not expect the Sponsor would struggle financially.
9. A letter from 1st Call Business Services Limited dated 5 April 2023 confirms the First Appellant's suitability for a caretaking operative role at £11 per hour payable monthly. An employment commencement date was to be confirmed upon receipt of confirmation of eligibility to work in the United Kingdom; national insurance details; a satisfactory criminal reference disclosure and a satisfactory reference from previous employer. Employment was also subject to a six month probation period.
10. The Sponsor attended the oral hearing and adopted her written statement signed and dated 9 May 2023. In her statement, the Sponsor confirmed that the Appellants will not have recourse to public funds in the United Kingdom as she will be able to provide for them. After the Appellants arrival, she will no longer have her current childcare difficulties so she will be able to work full-time and the First Appellant has also secured employment in Manchester on a part-time basis. The Sponsor also has a savings account with a balance of over £10,000 which will support the wider family and a number of Nationwide statements dated between December 2020 and April 2023 were attached.
11. In cross examination, Ms Nolan asked the Sponsor about entries in the bank statements. First, where the funds for a £5000 cash deposit on 24 November 2022 came from. The Sponsor stated that this money was from her children's savings accounts, transferred to her own savings account to stop her overspending. Secondly, where the funds for a £5000 transfer on 23 December 2022 came from. The Sponsor stated that she couldn't really remember, but thinks they were a transfer from her other account, for which no statements had been provided. The statements provided were said to be from a savings account which was only sometimes used to pay bills if there was a problem with the other

account. The Sponsor confirmed that there was no up to date statement to show her current savings account balance as at the date of hearing.

12. In relation to employment, the Sponsor works with NHS professionals and there are many shifts available that she could choose to increase her hours without any permission needed from her employer. There was no documentation to confirm this. At present, the Sponsor is paid weekly, ranging between £230 and £306 per week depending on the hours that she works. There are different rates of pay for weekdays, nights and weekends and the Sponsor would expect to be able to earn around £600 per week doing 4 night shifts after the Appellants' arrival in the United Kingdom as childcare would be available to allow her to do this work.
13. The Sponsor currently lives in rented accommodation, paying £723 per month for rent and £48 monthly for gas and electricity. The property has three bedrooms and a large living room, such that the Sponsor said there is sufficient space for her, her two children aged 10 and 12 and the five Appellants to live together. Specifically, the adult Appellants would share a room, the three boys can share a room, the two girls can share a room and there would be space for her. There are no documents in relation to the property but the Sponsor stated it would not be overcrowded as they are all one family.
14. In relation to the offer of employment for the First Appellant, the Sponsor did not know how many hours the contract would be for or whether the First Appellant had supplied any of the required documents listed in the letter. She did not however think it would be a problem to obtain a reference from his previous employer as although he is not currently working, the First Appellant last worked around 8 months ago.
15. The Sponsor pays the Appellants' rent on an annual basis and otherwise sends him maybe £50 or £100 a month. She does not keep receipts so there is no recent evidence of any recent transfers.

Submissions

16. On behalf of the Respondent, Ms Nolan relied on the reasons for refusal letters dated 19 February 2021 and submitted that the Appellants had not discharged the burden on them to show that they would not be a burden on public funds after arrival in the United Kingdom. The evidence in relation to the Sponsor increasing employment is not supported by any documentary evidence from NHS Professionals or otherwise and the First Appellant's offer of employment is conditional on a number of factors. These include a satisfactory reference from a previous employer but this would be contrary to the basis of the applications that the Appellants were solely financially dependent on the Sponsor and were not working.
17. The evidence of the Sponsor's savings was also said to be unsatisfactory, first because it was out of date with no indication of the current balance and secondly because there was no audit trail of significant funds paid in to the account. In November 2022, the balance was as low as £6.11 and the explanation for the two significant deposits was not logical, nor was there any evidence of the origin of those funds. The Sponsor stated that money was transferred in to a savings account to prevent overspending, but the statements show usual spending transactions including cash withdrawals and payments for things like petrol rather than a savings account.

18. Ms Nolan noted that there was still no schedule of income and outgoings for either the Appellants or the Sponsor and the current level of financial support from the Sponsor's oral evidence of £50 to £100 a month falls far short of what would be required for a family of five in the United Kingdom. Although not necessary for the current assessment, by way of comparison, the current income support rules would require somewhere in the region of £340 a month for two adults and three children.
19. Finally, there was no documentation at all about the Sponsor's property and whether this would be able to accommodate a further five people without overcrowding. There is no confirmation of the size of the property, no report as to overcrowding and nothing to suggest the landlord has given permission for five additional occupants to live there.
20. Overall it was submitted that the Appellants had not established that they would not be a burden on public funds in the United Kingdom, the evidence was insufficient to show that they could be supported here without this.
21. On behalf of the Appellants, Mr Atuegbe accepted there was a lack of documentary evidence but relied on the Sponsor's evidence which he submitted was clear, logical and not evasive such that it is alone sufficient to establish that the Appellants would not become a burden on public funds. He submitted that it was an open fact that NHS professionals could choose their shifts and there is no need for permission to do so nor any written confirmation. There is a clear reason as to why the Sponsor is not currently working full-time for childcare reasons which would no longer be an issue with the Appellants living with her.
22. In relation to the employment offer to the First Appellant, the documents required would not be expected before his arrival in the United Kingdom. It was accepted that there was no confirmation of hours of work, place of employment or if the hours would be regular, but Mr Atuegbe submitted that it did not matter as he would be able to obtain alternative employment in any event.
23. The Sponsor has a savings account and it was submitted, without any supporting evidence, that the funds of over £10,000 were still available as at the date of hearing and historically this account has had a high balance. The Sponsor was also able to give detailed evidence about her accommodation and how the Appellants would be accommodated within it. The Sponsor's evidence was not that the Appellants were not allowed to stay there.
24. Finally, it was submitted that the only reason the Sponsor was currently in receipt of public funds was that she was only able to work limited hours for childcare reasons, but the opportunity to work more means that she is unlikely to need public funds for herself after the Appellants arrive.

Findings and reasons

25. These appeals involved a significant lack of candour from the Appellants and the Sponsor, much of which only came to light during the Sponsor's evidence and closing submissions. There were significant changes in the circumstances of the Appellants and the Sponsor since the date of application, but there was no proper updating of their circumstances in the written statements and no supporting documentary evidence. In particular, the Sponsor had changed employment, on an unknown date, since the application and was no longer working on a

contracted hours basis. There was no documentary evidence at all of her current employment said to be with NHS Professionals, her hourly rate/shifts, no payships or any up to date bank statements showing pay being credited. It is entirely unsatisfactory that this was only confirmed in closing submissions that employment had changed and no reasons have been given as to why the current position has not been confirmed with documentary evidence when an adjournment of the previous hearing was specifically given for the purpose of providing up to date information. This particular lack of candour and evidence is directly relevant to the issue in these appeals.

26. In relation to the Appellants, the whole premise of the applications made were that they did not have any employment or income themselves and were solely dependent on financial remittances from the Sponsor. However in oral evidence the Sponsor stated that the First Appellant was working in Nigeria approximately eight months ago. Although the First-tier Tribunal's findings that the Appellants were dependent and thus extended family members were not challenged, this evidence does call in to question whether that finding remains good as at the date of hearing. That is particularly so when there is no evidence of any money transfers to the Appellants since mid-2021 and the Sponsor's own oral evidence was that she sends sometimes £50 a month, sometimes £100 a month (less than that stated in the original application). I have not however decided these appeals on that basis nor by any reference to whether dependency still exists because the rehearing was specifically on the sole issue of whether the Appellants would be a burden on public funds in the United Kingdom. It remains a concern however that the Appellants and Sponsor have not been forthcoming about changes in their circumstances and chosen not to provide any evidence of income and outgoings either in Nigeria or the United Kingdom. This does still adversely affect their credibility and the weight to be attached to oral evidence.
27. The issue in these appeals is whether the Appellants would become a burden on public funds after arrival in the United Kingdom and relevant to that question is whether the Sponsor can adequately maintain and support them, including with income from their own employment. I do not find that the evidence establishes on the balance of probabilities that the Appellants would not become a burden on public funds for the following reasons.
28. First, there is no satisfactory documentary evidence as to where the Appellants will live in the United Kingdom. The only evidence as to accommodation was in the Sponsor's oral evidence and although she appears to have considered where everyone would sleep, there is no evidence that the landlord has given permission for five additional people to live at the property nor any report as to its size (for example, whether any room is of sufficient size to accommodate three male children aged three, eleven and twelve years) or whether this would constitute overcrowding. The Appellants have not established that suitable accommodation would be available for them on arrival in the United Kingdom, nor that any additional accommodation costs could be met.
29. Secondly, there is no satisfactory documentary evidence as to the Sponsor's current employment in terms of whether she has a contract or works on a self-employed basis, her hours (including whether these are contracted for a set amount) or income; nor of her potential increased income assuming that she would be able to increase those hours or, for example, work night shifts at a higher rate of pay (the rates not having been disclosed at all). Whilst I accept that it is likely that there are further shifts available within the NHS (demand

therein is well known) there is simply nothing about what the rates would be to show what income may be likely with increased or different shifts.

30. It is difficult given the lack of current documentary evidence to even determine what the Sponsor's current income is, the evidence of employment submitted originally no longer being relevant. On her oral evidence, it would seem to be in the region of £1000 to £1326 per month, of which £771 is committed for rent and utilities. This leaves remaining income of between around £230 and £555 a month, from which only £50 to £100 is currently being sent to the Appellants on a regular basis (again based on the Appellant's oral evidence as no up to date documentary evidence has been submitted and in addition to annual rent, of which there is also no documentary evidence or even current figure given) and from which her two children are also supported. In 2020 there was additional income from working tax and child tax credits, as well as child benefit in the region of £250, but again no up to date evidence of whether the Sponsor is still in receipt of these benefits and if so, what their current amount is. Overall, the Appellants have not established that the Sponsor could currently financially support an additional five people on what is a limited income, possibly still supported by public funds because of the low income levels. Her disposable income is estimated to be as little as £230 a month from which eight people would need to be supported and even on the highest claimed earnings, only £555 a month.
31. I do not find that the letter with a conditional offer of employment to the First Appellant is sufficient evidence that he would be earning any or any particular income in the United Kingdom to support the family and avoid becoming a burden on public funds. The letter does not confirm the hours to be worked, although in a written statement the Sponsor said this would only be part-time nor whether there are specific contracted hours on a regular basis. It is unclear for how long the offer of employment is open. The offer of employment is also conditional and the ability to provide a previous employer reference goes against the basis of the Appellants' application that they have no other income from employment or otherwise. The suggestion of other alternative employment is vague and unspecific, with no indication of any skills or experience relevant to obtaining employment in the United Kingdom.
32. Finally, I do not find that the bank statement that as at 23 April 2023 the Sponsor had savings which could be used to support the family can be given any great weight to establish that the Appellants would not be a burden on public funds. There is no up to date statement as to the balance as at the date of hearing (without any reason for the absence of such information) and whether these funds would still be available. The history of the account from the statements provided (which are from periodic dates rather than a complete set) show balances which fluctuate significantly between less than £10 to over £18,000; without a consistently maintained balance. The Sponsor's evidence was that at one point she was overspending and that funds were taken from her children's accounts to supplement a balance. Her evidence on this was not coherent or consistent with an account which self-evidently was not a purely savings account, nor was it rational to move money from a children's savings account to prevent overspending. If the Sponsor was overspending at this time, it is also wholly unexplained how she was able to transfer £5000 from another account of which she has provided no evidence. Overall, the Appellants have failed to establish that these funds are still at the Sponsor's disposal for use to avoid them becoming a burden on public funds.

33. In conclusion, the burden is on the Appellants to establish that they would not become a burden on public funds in the United Kingdom and they have failed to do so. The Respondent has identified justifiable concerns that the Appellants would not be able to support themselves, nor that the Sponsor, alone or in combination with the Appellants, would be able to do so without recourse to public funds. That would be the case even considering the limited evidence at its highest. There is almost a complete lack of any up to date documentary evidence as to the financial position of the Appellants and Sponsor and I attach only limited weight to the Sponsor's oral evidence in the absence of any supporting documentation given that there were directions giving a clear opportunity for this to be submitted and there was no explanation why nothing had been provided. It would be reasonable to expect that documentary evidence, particularly of current employment and savings in bank statements, would be readily available. For these reasons, I dismiss the appeals.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was set aside.

The appeals are remade as follows:

The appeals are dismissed under the Immigration (European Economic Area) Regulations 2016.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th September 2023



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

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First-tier Tribunal No: EA/03447/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Samuel Dele Aigbogun
Nene Clementina Aigbogun
Precious Damilola Aigbogun
Davis Osariemen Aigbogun
Anthony Babalola Aigbogun
(NO ANONYMITY ORDERS MADE)**

Respondents

Representation:

For the Appellant: Mr O Atuegbe, Solicitor at RA Solicitors Ltd
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 25 April 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the main papers were all available electronically. The Appellant's solicitors had submitted a skeleton argument and bundle on the Saturday preceding the hearing which had not yet reached me at the time of the hearing, but oral submissions were made and it appears there was only one document missing from those available to me (a rent receipt), which was not relevant to the error of law issue.
2. At the outset of the hearing, a procedural issue was identified in that RA Solicitors Ltd had not provided (and did not have) any written authority to act from any members of the Aigbogun family and had only been instructed by and communicated with the Sponsor. The Sponsor is not a party to these proceedings and authority from her alone is not sufficient. I agreed to hear from Mr Atuegbe on the condition that written authority from the Aigbogun family was provided to the Upper Tribunal within 24 hours. Without such authority, RA Solicitors Ltd may not continue to act for the Aigbogun family.
3. The Secretary of State for the Home Department appeals with permission against the decision of First-tier Tribunal Judge McTaggart promulgated on 24 November 2021, in which the Aigbogun family's appeals against the decisions to refuse their applications for an EEA Family Permit under the Immigration (European Economic Area) Regulations 2016 dated 19 February 2021 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with the Aigbogun family as the Appellants and the Secretary of State as the Respondent.
4. The Appellants are all nationals of Nigeria, comprising of husband, wife and their three minor children; in respect of whom materially identical decisions were made for the following reasons. First, there was no evidence of the Appellants' circumstances such as income, expenditure or any employment. Secondly, there was nothing to demonstrate that the money transferred by the Sponsor paid for essential needs such rent and food; such that dependency was not established. Thirdly, there was insufficient evidence that the Sponsor, in receipt of state benefits due to her low income and with a relatively low bank balance, would be able to support all of the Appellants in the United Kingdom without them becoming a burden on public funds.
5. Judge McTaggart allowed the appeal in a decision promulgated on 24 November 2021 under the Immigration (European Economic Area) Regulations 2016. The issue in the appeal was identified as whether the Appellants were 'dependant' on the Sponsor, there being no issue as to the relationship between them or as to the status of the Sponsor as an EEA national exercising treaty rights in the United Kingdom. In essence, the Judge found that in the absence of any evidence to the contrary, the Appellants were all, as claimed, solely reliant on the monies remitted to them from the Sponsor to meet their essential living needs such that they are 'extended family members' under Regulation 8 of the Immigration (European Economic Area) Regulations 2016; but that the matter reverts to the Respondent for an extensive examination of all the circumstances before discretion is exercised by the Respondent as to whether or not to grant EEA Family Permits.

The appeal

6. The Respondent appeals on the single ground that the First-tier Tribunal has failed to determine the issue of whether the Appellants would be a burden on public funds upon entry to the United Kingdom; a matter identified in the reasons for refusal letters and a material error of law to find, in the absence of determining that issue, that the Appellants met the requirements of the Regulations as extended family members.
7. Mr Tan relied on the written grounds of appeal and referred to the documents now available in the Respondent's bundle (which may not have been before the First-tier Tribunal) which included the Sponsor's bank account, details of her income and receipt of Working and Child Tax Credits.
8. On behalf of the Appellants at the hearing, Mr Atuegbe submitted that although there was no express consideration of the issue of whether the Appellants would be a burden on public funds in the United Kingdom, it could be inferred that this was considered and found that they would not, as reading between the lines, it was accepted that dependency would continue.

Findings and reasons

34. At the hearing, I indicated to the parties that there was a material error of law in the decision of the First-tier Tribunal in failing to making findings and determine an issue clearly raised in the decision letters. There is no plausible way in which it could be inferred that the issue had been considered and findings made in the Appellants' favour on the basis of an assumed accepted continuing dependency in circumstances where on the face of the decision the Judge stated that there was a single issue in the appeal and proceeded to make findings only on that issue. Further, it would seem unlikely that on the evidence before the First-tier Tribunal, the Judge could have been satisfied that the Appellants would not be a burden on public funds in the United Kingdom given that there was no information as to where or how they would be accommodated and the only evidence in relation to the Sponsor showed a relatively low income, supplemented by state benefits. The Sponsor's current level of financial support of £150 a month would not likely be sufficient to sustain a family of five in the United Kingdom.
35. Although it should have been possible to remake the appeal at this hearing to determine this self-contained issue in accordance with the directions given to the parties beforehand; Mr Atuegbe indicated that there had been a change of circumstances since the previous First-tier Tribunal in that the Sponsor had available savings, possible full-time employment when the Appellants arrived and employment had been arranged for the First Appellant. In these circumstances, whilst that evidence should have been prepared with a rule 15(2A) application in advance of this hearing, it was in the interests of fairness to allow the Appellants to submit this further evidence. Directions were agreed for a further hearing in the Upper Tribunal to determine the issue of whether the Appellants would be a burden on public funds in the United Kingdom. The First-tier Tribunal decision is otherwise preserved in relation to the findings of dependency and there being no issue as to the status of the Sponsor or their relationship.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal with preserved findings of fact as outlined above.

Directions

1. RA Solicitors Ltd to provide to the Upper Tribunal by 11am on 26 April 2023 written authority to act on behalf of the Appellants.
2. The appeals to be re-listed in the Upper Tribunal on the first available date before UTJ Jackson, with a time estimate of 1.5 hours. The hearing to be conducted by video means. No interpreter is required.
3. Any further evidence upon which the Appellants wish to rely to be filed and served no later than 14 days before the re-listed hearing. If oral evidence is to be given by the Sponsor, a written statement must be filed to stand as examination in chief.
4. The Repondent may submit any further evidence upon which she wishes to rely no later than 7 days before the re-listed hearing.
5. The Appellants may, but are not required, to submit an updated skeleton argument no later than 7 days before the re-listed hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th April 2023