



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002998
First-tier Tribunal No:
EA/16138/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MRS KULSOOM BIBI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant

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

Heard at Manchester Civil Justice Centre on 25 May 2023

DECISION AND REASONS

1. The appellant is a national of Pakistan. On 22 April 2021 she made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules on the basis that she is the family member of a relevant EEA citizen. The appellant claims that she is the wife of Mohammed Saleem, an Italian national who arrived in the UK on 17 November 2020.
2. The application was refused by the respondent for reasons set out in a decision dated 21 October 2021. The respondent noted that in support of the application the appellant had provided Italian marriage documents as evidence of the familial relationship. The respondent noted the appellant

was married in Pakistan, but had failed to provide her original marriage certificate or the documents provided to the Italian authorities. As the appellant had not provided the original marriage certificate, the respondent said she is unable to verify that the marriage took place within the legal requirements of the country in which it took place.

3. The appellant's appeal was allowed by First-tier Tribunal Judge McClure for reasons set out in a decision promulgated on 6 May 2022. In that same decision Judge McClure dismissed appeals by three of the appellant's children, all of whom are adults against decisions to refuse applications made by them. Neither the appellant, her sponsor nor anyone acting on her behalf appeared at the hearing of the appeal on 20 April 2022. Judge McClure records at paragraph [5] of the decision that there is a letter from solicitors acting on behalf of the appellants indicating that the case is to be dealt with on the papers lodged. The respondent was also unrepresented.
4. The respondent claims that in allowing the appellant's appeal, Judge McClure made material errors of law. In summary, the respondent claims Judge McClure erred in law in failing to take account of the lack of evidence that the appellant's husband, her sponsor, had leave under the Immigration (European Economic Regulations) 2016, ("the 2016 EEA Regulations") or Appendix EU; having such leave is essential to qualify as a relevant EEA Sponsor under Appendix EU. Furthermore, the appellant made her application on 21 April 2021 and therefore the appellant's relationship with her sponsor needs to have existed before 11pm on 31 December 2020. The respondent claims Judge McClure acknowledged there are concerns about the documentary evidence relied upon by the appellant. However, beyond accepting the appellant and sponsor both consistently claim they are married, a lie that is easy to maintain, the Judge fails to give any reasons for concluding that the appellant has discharged the burden that rests upon her, to establish that the marriage took place within the legal requirements of the country in which it took place. The respondent claims that insofar as the judge relied upon evidence of money transfers, it is entirely possible that the money transfers were undertaken as a 'ruse' to support the claim, and in any event, the vast majority of the evidence of 'modest' money transfers post-dates the making of the application. There was, as the judge noted, an absence of any explanation for separate money transfers made on the same day. The respondent claims it does not follow that the transfer of money is indicative of the familial relationship claimed.
5. Permission to appeal was granted by Designated Judge Shaerf on 25 May 2022.
6. There was no appearance by or in behalf of the appellant or sponsor when the hearing of the appeal was called on before me at 11:05am.
7. Mr Bates adopted the grounds of appeal and submits that the appellant had failed to provide a copy of any residence card issued to the sponsor to establish that the sponsor was living in the UK exercising treaty rights as at 31 December 2020.

Error of law

8. Judge McClure noted, at paragraph [9] of his decision, that the appellant applied for a family permits the as the wife of Mr Mohammad Saleem in accordance with the EUSS Settlement Scheme.
9. For the purposes of an application under the EUSS for indefinite leave to enter or remain as a family member of a relevant EEA citizen, it was for the appellant to establish that she is the spouse of a relevant EEA citizen, (i.e. wife on of Mr Mohammad Saleem) and that the marriage was contracted before the specified date. That is, by 31 December 2020. The respondent noted the appellant was married in Pakistan but had failed to provide a copy of the original marriage certificate or the documents provided to the Italian authorities so that the respondent can be satisfied that the marriage is recognised by a competent authority within Pakistan. The respondent was not satisfied the marriage took place in accordance with the legal requirements in Pakistan.
10. At paragraph [12] of the decision, Judge McClure refers to a statement made by the sponsor in which he states that he was working in Italy and that his wife and children joined him in 2009. At paragraph [13] Judge McClure said:

“The sponsor claims that he was working in Italy until 2020 and was the main breadwinner for the family. However in 2020 things became difficult and he moved to the UK. Since moving to the UK he claims to have been working as a labourer in a construction company. Letters from his employer and wage slips confirm that he is working in the UK.”
11. As far as the appellant’s relationship (marriage) with the sponsor is concerned, Judge McClure identified in paragraphs [15] to [28] of his decision, a number of anomalies in the documentary evidence relied upon by the appellant, that required explanation. At paragraph [30] of the decision, Judge McClure said:

“With regard to the relationship of the appellants to the sponsor, the birth certificates and other documents are of limited value. They are not contemporaneous with the births, one is unreadable, the source of the information given that the appellants are in Italy and the sponsor is in the UK is doubtful, the information does not come from an independent source. Clearly post the applications, the births of the second, third and fourth appellants have been registered by individuals in Pakistan but the sponsor and first appellant are in Italy for the majority of that time.”
12. At paragraph [32], Judge McClure noted that the births of the appellant’s children have been registered long after the event in an effort to support the present applications. In the circumstances, he found that little reliance can be placed on the documents. At paragraph [32] Judge McClure recorded that the appellant and sponsor have been consistent in asserting that the second, third and fourth appellants are their children. As far as the marriage certificate is concerned, Judge McClure said:

“33. Similarly with regard to the marriage certificate that again appears not to be contemporaneous with the marriage itself. There are issues with the certificates and again the source for the information provided.”

13. Judge McClure plainly had concerns about the evidence relied upon by the appellant regarding the family's circumstances, including their financial circumstances. Judge McClure found the true financial and family circumstances of the appellant's children have not been disclosed. However, at paragraph [39] Judge McClure said:

“Having considered all the evidence and even having considered the issues identified in respect of the documentation I do find that the first appellant (i.e. Mrs Kulsoom Bibi) and the sponsor are married. Whilst there are issues with the marriage certificates, the appellant and the sponsor have been consistent and clearly the sponsor would not send money to someone to whom he is not related.”

14. At paragraph [40], Judge McClure found the second, third and fourth appellants are the offspring of the marriage. Judge McClure found, at [41], that the first appellant (*i.e. Mrs Kulsoom Bibi*) meets the requirements of the EUSS Settlement Scheme and he allowed her appeal.
15. In my judgment, the decision of Judge McClure is vitiated by a material errors of law and must be set aside. Judge McClure plainly had concerns about the evidence relied upon by the appellant regarding the appellant's marriage to Mr Mohammad Saleem, but in the end he accepted that the first appellant and the sponsor are married, and that the remaining appellant's are the offspring of the marriage. The issue raised by the respondent in her decision was not simply whether the appellant and sponsor are married, but whether that marriage took place within the legal requirements in Pakistan. That is an issue that Judge McClure does not address.
16. The difficulty with the decision is twofold. First judge McClure does not consider at all whether the sponsor is a 'relevant EEA citizen' as defined in Annex 1 of Appendix EU of the immigration rules. A relevant EEA citizen for the purposes of this appeal is an EEA resident in the UK and Islands for a continuous qualifying period which began before the specified date. That is a fundamental pre-requisite. The appellant and her sponsor have failed to provide a copy of any residence card issued to the sponsor to establish that the sponsor was living in the UK exercising treaty rights as at 31 December 2020.
17. Second, Judge McClure did not engage with the claim made by the respondent in her decision that the appellant had failed to provide the original marriage certificate or the documents provided to the Italian authorities and the evidence did not establish that the marriage took place within the legal requirements of the country in which it took place. The decision must therefore be set aside.
18. As to disposal, the appropriate course in my judgement is for the decision to be remade in the Upper Tribunal.

Remaking the decision

19. In summary, since 11:00pm GMT on 31 December 2020 when the Immigration (European Economic Area) Regulations 2016 ('the 2016 EEA Regulations') were revoked, free movement rights under Directive

2004/38/EC ceased to have effect in the UK. EEA citizens and their family members require permission to enter or stay in the UK, unless they have protected rights under the EU Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement ("the Agreements"). EEA citizens resident in the UK in accordance with the 2016 EEA Regulations immediately prior to 11:00pm GMT on 31 December 2020, or who had acquired a right of permanent residence by that date (unless they have been absent from the UK for a continuous period of more than 5 years), should have regularised their immigration status by making an application to the EU Settlement Scheme (EUSS) before the end of the grace period (30 June 2021).

20. The appellant and her sponsor have failed to provide a copy of any residence card issued to the sponsor to establish that the sponsor was living in the UK exercising treaty rights as at 31 December 2020.
21. I accept, as Mr Bates submits that the appellant has failed to establish that the sponsor was an EEA resident in the UK and Islands for a continuous qualifying period which began before the specified date. Mr Bates referred to the letter from H & S Construction at page 108 of the appellant's bundle and the payslips relied upon by the sponsor that are at pages 109 to 116 of the appellant's bundle, relating to the sponsor's claimed employment.
22. There are a number of anomalies in the evidence before me and I find that the appellant has failed to establish that he was employed as claimed before 11:00pm on 31 December 2020.
23. In her application, the appellant claims her husband came to the UK on 17 November 2020. In his witness statement dated 14 April 2022, the appellant's sponsor, Mr Mohammad Saleem claims his wife and children joined him in Italy in or about 2009. He claims things became difficult and so he decided to move to the UK in 2020 to seek better employment opportunities. He does not identify the date upon which he moved to the UK.
24. The letter dated 18 December 2020 provided by the Director of H & S Construction (S-O-T) Ltd, Mr Javid Iqbal, states Mr Saleem Mohammad starting working for the company as a labourer on 16 November 2020. It is difficult to see how Mr Mohammad could have started working for H & S Construction on 16 November 2020 if, as the appellant claims, he arrived in the UK on 17 November 2020. I find that the appellant and her husband have failed to provide a truthful account of the circumstances in which Mr Mohammad arrived in the UK, and that I can attach little weight to the evidence from H & S Construction regarding Mr Mohammad's employment.
25. The wage slips relied upon by the sponsor provide the following information:

Date	Net Pay	Gross Taxable pay to date	pay method	Page
31.08.21	£1500.00	£8765.69	Cash	116

30.09.2 1	£1200.00	£10101.78	Cash	115
31.10.2 1	£1200.00	£11407.42	Cash	114
30.11.2 1	£1200.00	£12721.92	Cash	113
31.12.2 1	£1200.00	£14036.42	Cash	112
31.01.2 2	£1200.00	£15350.92	Cash	111

26. The sponsor has also provided a bank statement for the period covering 10 November 2021 to 3 February 2022 (*pages 109 and 110*). The bank statements disclose payments into the sponsor's bank account on 14 December 2021 and 17 January 2022 from H & S Construction in the sum of £1200. The payslips dated 31 December 2021 and 31 January 2022 are difficult to reconcile with the bank statement. There is a payment of £1200 into the bank account on 14 December 2021 and 17 January 2022, but the payslips for December 2021 and January 2022, even assuming they cover the relevant period, show the payment method as 'cash'. Notably, there is no evidence that the sponsor had in fact been working for H & S Construction between 16 November 2020 and August 2021. No payslips or bank statements are provided for the material period. There is no other evidence of the sponsor's presence or employment in the UK before the specified date (2300 GMT on 31 December 2020).
27. In his witness statement, Mr Saleem Mohammed claims that following his arrival in the UK, he continued to support his wife and children by regularly sending money to them. He exhibits remittance slips. I note the first money remittance slips in time are dated 22 April 2021 (*pages 26, 41, 81, 90, 91 of the appellant's bundle*). There are no remittance slips demonstrating he sent any money to his family between November 2020 and April 2021.
28. In addition to the absence of evidence to establish that the sponsor was an EEA resident in the UK and Islands for a continuous qualifying period which began before the specified date, the appellant has failed to provide the original marriage certificate, so that the respondent can be satisfied that the marriage took place within the legal requirements of Pakistan, or any confirmation from the relevant authorities that the marriage was performed in accordance with the legal requirements of Pakistan. The appellant has signed a witness statement dated 14 April 2022. Her signature is not in English and the statement is not certified as having been translated to her in a language that she understands. She exhibits what she describes as the original marriage certificate (Nikka Nama), together with a translation. The documents appear to be copies, but in any event, taking the evidence at its highest, there remains no evidence from the relevant authorities that the marriage was performed in accordance with the legal requirements in Pakistan.

Case No: UI-2022-002998

First-tier Tribunal No: EA/16138/2021

29. I am not therefore satisfied that the appellant has established that the relevant eligibility requirements for an EUSS Family Permit are met by her and it follows that I dismiss her appeal.

Notice of Decision

30. The decision of First-tier Tribunal Judge McClure promulgated on 6 May 2022 is set aside.
31. I remake the decision in the Upper Tribunal and I dismiss the appellant's appeal.

V. L Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 November 2023