



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006100**  
**First-tier Tribunal No:**  
**EA/00414/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 18 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE LESLEY SMITH**  
**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

**Between**

**MR WASIF HAFEEZ**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Mehroz Khan (the Appellant's sponsor) in person  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House via Microsoft Teams on Friday 21 July 2023**

**DECISION AND REASONS**

**BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Row promulgated on 5 August 2022 ("the Decision") dismissing his appeal against the Respondent's decision dated 29 March 2021 refusing him an EEA Family Permit as the extended family member of an EEA national exercising Treaty rights in the UK under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"). The EEA (Dutch) national concerned is claimed to be the Appellant's cousin ("the Sponsor").

2. The Respondent refused the Appellant's application on the basis that he was not satisfied that the Appellant was related to the Sponsor as claimed and was not satisfied that he was dependent on him.
3. The hearing proceeded on the papers. The Appellant, Sponsor and Respondent were not represented. The Judge therefore had to do his best to ascertain what the evidence was intended to show. There was some confusion surrounding the evidence which had been filed but we accept that the Judge did have evidence apparently filed after the appeal which was before the Judge. The Judge found however that the evidence did not establish that the Appellant and Sponsor were related as claimed. He therefore dismissed the appeal. He made no findings in relation to dependency.
4. The Appellant via the Sponsor challenged the Decision on the basis that the documents, properly understood, did provide sufficient evidence to support his case both as to relationship and dependency. He said in relation to the family documents that the Judge could have verified that the document showed what he said it might show using the website given and the QR code and password. The grounds also sought to explain why some entries on the bank statement did not clearly show that the funds emanated from the Sponsor.
5. The application for permission to appeal was out of time but time was extended by First-tier Tribunal Judge S Aziz. However, by a decision dated 25 November 2022, he refused permission for the following reasons:
  - “..2. In summary, the grounds assert that on 13 July 2022, the appellant had submitted a consolidated appellant's bundle (hardcopy) via recorded delivery. I note that from the grounds that this bundle was sent to Arnhem House in Leicester. The Royal Mail tracking number confirmed that it was received on 15 July 2022. It is argued that this bundle addresses all of the objections which have been raised. The appellant argues that this bundle was not considered by the Tribunal when they heard his appeal on 20 July 2022.
  3. The appellant's appeal was heard in the IAC at Newcastle upon Tyne. It appears that the appellant has incorrectly sent his bundle to the wrong IAC address. It cannot therefore be said that he properly served this additional bundle on the Tribunal.
  4. Nevertheless, I note from paragraph 9 of the Decision and Reasons that the Judge notes that additional documents were supplied after the appeal. It therefore appears that the Judge did receive the additional bundle before he made his decision. The Judge makes findings on this additional evidence at paragraphs 9-10, before concluding that on the evidence before him he was not persuaded the appellant and sponsor were related as claimed. This was a finding that was open to him on the evidence that was presented.
  5. There is no arguable material error of law.”
6. Following renewal of the application for permission to appeal again offering further explanation of the documentary evidence, permission

was granted by Upper Tribunal Judge Hanson on 30 January 2023 for the following reasons:

“4. The Judge determined the merits of the appeal without hearing as the appellant had requested. The Judge noted that additional documents had been supplied after the appeal without a covering explanation. The Judge noted the Registration Certificates from Pakistan seem to indicate that the appellant’s mother and the sponsor’s mother have a common parents which would make the appellant the cousin of the sponsor, as claimed. The Judge noted, however, that the Registration Certificates were all issued late, as were the other documents, which would have been documents prepared from information provided which was not likely to have been checked. There was no DNA evidence to prove the relationship and the Judge was not satisfied from the documents that the appellant and sponsor are related as claimed [12]. In light of this the Judge does not go on to consider dependency [13].

5. The grounds argue that contrary to the Judge’s claim that no explanation was provided for the documents a full explanation was included. The Grounds argue the Registration Certificates were attested by the Ministry of Foreign Affairs to certify their authenticity which could be checked using a QR code and password provided.

6. It is known that in some countries certificates evidencing relationships or birth are not always acquired in accordance with the same timescales as they would be in the UK and are often requested only when the need for them arises. There is an arguable question in this appeal of whether the Judge did consider all the evidence made available.

7. The grounds refer to the provision of money receipts, but the Judge did not go on to consider this matter. If material error is established in relation to Ground 1 regarding documentation both matters will need to be considered further.”

7. The Respondent filed a Rule 24 Reply dated 27 February 2023 seeking to uphold the Decision.
8. The matter comes before us to decide whether the Decision does contain an error of law. If we conclude that it does, we must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, we must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
9. We had before us a core bundle of documents relating to the appeal to this Tribunal, and the Appellant’s bundle ([AB/xx]) and Respondent’s bundle as before the First-tier Tribunal.
10. The appeal in the First-tier Tribunal was listed for hearing in Newcastle. The Sponsor does not live in the London area. The Appellant lives in Pakistan. The hearing before us proceeded as a remote hearing without objection from the parties. There were no technical difficulties.
11. As the Sponsor was in person and the Appellant was not present, we invited Ms Ahmed to present the Respondent’s case first. Having heard from her and the Sponsor, we indicated that we found an error of law in the Decision and intended to remit the appeal for re-hearing. Ms Ahmed

agreed that was the appropriate course since findings need to be made for the first time in relation to dependency and the evidence concerning family relationship also needs to be revisited afresh. There may be credibility issues. As the Appellant did not attend the hearing and the Sponsor was in person, we indicated that we would provide our reasons in writing which we now turn to do.

## **DISCUSSION**

12. We begin with the paragraphs of the Decision which set out the Judge's consideration of evidence and findings as follows:

"8. The first issue was whether the appellant and sponsor were related as claimed. The respondent had not accepted the birth certificate of the appellant as being reliable because it been [sic] registered many years after his birth. The information in it would not be checked.

9. Additional documents had been supplied after the appeal. It was not entirely clear what the documents were intended to establish. There was no written explanation of this. The appellant had produced a number of family registration certificates from Pakistan. If reliable, these would seem to indicate that the appellant's mother and the sponsor's mother had common parents. If this is the case then the appellant would be the cousin of the sponsor.

10. The registration certificates have the same problem as the birth certificate. They were all issued late. The appellant's family registration certificate was issued on 28 October 2019. The sponsor's was issued on 11 November 2019. The registration certificate of their parents was issued on 16 November 2020. These documents would have been produced from information which is not likely to have been checked. Consequently I do not find that those documents establish the relationship.

11. It was open to the appellant to have obtained DNA evidence to prove the relationship. This has not been done.

12. On the evidence before me I am not satisfied that the appellant and sponsor are related as claimed. The appellant therefore cannot demonstrate that he is the extended family member of the sponsor. His appeal must fail for that reason.

13. It is not necessary for me to go on to consider dependency although this was still a matter in dispute."

13. As is evident from the foregoing, this is not a case where the Judge either did not realise that he had documents or had failed to consider them. The Judge found as he did because he was not satisfied that the documents produced were reliable.

14. We therefore turn to the evidence which was before the Judge regarding the relationship. The Appellant's birth certificate is at [AB/23]. It is dated as issued on 12 April 2021. The Appellant was born in 1988. As the Respondent had pointed out, therefore, there was significant delay in the issue of the Appellant's birth certificate. In fact, it appears that the one in the bundle is even later than that submitted with the application. There is however at [24B] a letter from the Appellant which seeks to explain that a later one was issued because the Union Council had upgraded their system to allow it to be accessed online. There is also at

[24] a letter from the Union Council dated on the same date as the certificate explaining that birth certificates do not have to be issued at birth and confirming the authenticity of the certificate.

15. The Family Registration Certificates appear at [AB/26-29]. As the Judge pointed out, those like the birth certificate are dated between 2019 and 2020. They are however of a different nature to the birth certificate. They simply certify the family members at a particular point in time. The fact that the point in time is close to the date of application or appeal hearing is nothing to the point.
16. It is in relation to these documents that the QR code point is made. We of course accept as Ms Ahmed submitted that there can be no obligation on a Judge to authenticate a document. It is for the party to do so. The burden of proving that the documents are reliable evidence of what they purport to show lies with the party producing them. However, the documents are said to come from the Government of Pakistan, National Database and Registration Authority, Ministry of Interior. The documents are said to certify that the family is registered with NADRA "as per the information provided". Although the documents themselves say that they cannot be relied upon in court in relation to property or inheritance issues, and whilst we accept as the Judge pointed out that there may be an issue as to how the authorities obtained the information which led to the issue of the certificates, we are concerned that the Judge did not apparently give weight to the provenance of those documents.
17. We accept as Ms Ahmed submitted that the burden of proving his case lay with the Appellant. However, taking all the documents together, we are satisfied that there are errors made by the Judge in (a) failing to consider all the documents together and holistically (b) failing to say what he made of the letter from the Union Council concerning the late registration of the Appellant's birth and (c) failing to give sufficient reasons for rejecting the evidence as satisfying the Appellant's burden to show that he was related as claimed to the Sponsor.
18. We do not suggest that another Judge could not reach the same conclusion on the evidence. A second Judge would also have to reach a finding as to dependency even if satisfied as to the relationship. However, we are satisfied that the error made is one which could have an impact on the outcome. We therefore set aside the Decision. For the reasons we give above, we are satisfied that the appropriate course thereafter is to remit the appeal for re-hearing by the First-tier Tribunal before a Judge other than Judge Row.
19. Finally, we should indicate that the Judge was at a disadvantage of having only the documentary evidence which was submitted to him late in the day with very little if any explanation as to what that evidence was or was supposed to show. The explanations have largely emerged in the course of the challenge to the Decision. As we explained to the Sponsor at the hearing, it will be incumbent on him to attend the next hearing to

give evidence and to explain to the Judge what the documentary evidence is intended to show.

20. We also pointed out to the Sponsor that, in relation to dependency, evidence of money being transferred is not sufficient of itself to establish dependency. The Appellant and Sponsor will need to provide evidence showing the use to which any money transferred is put and that it is used for the Appellant's essential living needs.
21. Otherwise, if the Appellant and Sponsor fail to explain the evidence to establish the Appellant's case on the next occasion, the outcome may well be the same.

### **NOTICE OF DECISION**

**The decision of Judge Row promulgated on 5 August 2022 contains errors of law which are material. We set that decision aside and remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Row.**

L K Smith

**Upper Tribunal Judge Smith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31 July 2023**

