



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

**Case Nos: UI-2023-002317**  
**UI-2023-002318**  
**UI-2023-002319**  
**First-tier Tribunal Nos:**  
**EA/08784/2022**  
**EA/08759/2022**  
**EA/08646/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 27 September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MRS SABA BEGUM (1)**  
**MR IZAZ HUSSAIN (2)**  
**MS NIDA HUSSAIN (3)**  
**(NO ANONYMITY ORDERS MADE)**

Respondents

**Representation:**

For the Appellant: Mrs Arif, Senior Home Office Presenting Officer  
For the Respondents: No one attended for the Respondents

**Heard at Birmingham Civil Justice Centre on 12 September 2023**

**DECISION AND REASONS**

**Background**

1. To avoid confusion, I shall refer to the parties as they were before the First-tier Tribunal i.e. I will refer to the Secretary of State as the 'Respondent' and to Mrs Saba Begum, Mr Izaz Hussain and Ms Nida Hussain as, respectively, the First, Second and Third Appellants.

2. This matter concerns appeals against the Respondent's three decision letters of 10 August 2022, refusing the Appellants' applications made on 27 and 30 March 2022. The First Appellant is the mother of the Second and Third Appellants.
3. The First Appellant applied under the EU Settlement Scheme to join the Sponsor, Mr Mohammad Hussain Gul Jan, on the basis that he is her spouse. The Second and Third Appellants applied under the EU Settlement Scheme to join the same Sponsor on the basis that he is their father and they are dependent on him.
4. The Respondent refused the Appellants' claims by letters dated 10 August 2022, which stated that the applications had each been considered under Appendix EU (Family Permit) to the Immigration Rules. The First Appellant's application was refused on the basis that she had provided a marriage certificate and family certificate as evidence of relationship but there were inconsistencies with this evidence; namely that, without explanation, the marriage was registered 27 years after the event and the Sponsor's name on those documents did not match the documents provided with the application. The Respondent refused the Second and Third Appellants' claims on the basis that they had not shown themselves to be dependent on the Sponsor.
5. The Appellants appealed the refusal decisions.
6. Their appeals were heard together as linked appeals by First-tier Tribunal Judge Dieu ("the Judge") at Birmingham on 15 March 2023. The Judge subsequently allowed all of the appeals in a decision promulgated on 24 April 2023.
7. The Respondent applied for permission to appeal to this Tribunal as follows:

"The Judge of the First-tier Tribunal has made a material error of law in the Determination.

It is respectfully submitted that in allowing the Appellant's appeal the FTTJ has failed to provide adequate reasons, failed to make findings on material facts, applied an incorrect burden of proof and has reversed the burden of proof.

At paragraph 7 the FTTJ finds that the Presenting Officers submissions that the issue of the Appellant changing his name when he did was clearly suspicious was not a point put to the Appellant in cross examination.

The Entry Clearance Officer's decision evidently raised the issue of the marriage certificate and the name changes at A2 of the Respondent's bundle.

"However, there were a number of inconsistencies with this evidence. You state that you entered in marriage with your EEA sponsor on 05 May 1987, you have provided a marriage certificate as evidence of this. It is noted, that your marriage was registered 27 years after the event. The name of your sponsor on these documents does not match the documents that they have provided on their EUSS application. No explanation for the late registration of marriage or the inconsistency of name changes has been provided. This casts doubts on the legitimacy of your relationship."

The Appellant gave oral evidence in respect of the issue of his name change as recorded at paragraph 7. The credibility or not of a response to a question is clearly a matter for submissions and is not a matter that needed to be put to the Appellant before any submission could be made on the issue. The FTTJ dismissal of this point on the basis it was not put to the Appellant is evidently unsustainable.

It is further submitted that The FTTJ fails at any point to make any findings on this issue and does not consider why the Appellant decided to change his name for no discernible reason shortly after his application was made.

The FTTJ also on its own accepted evidence, clearly errs in finding that the Appellant's explanation as to why the marriage certificate was registered many years after the alleged date of marriage was credible. The 2nd appellant claimed she went to Spain in 2008 to live with her husband and there was no evidence that her residency was unlawful. As such the Appellant's would clearly have been required to satisfy the Spanish authorities they she was lawfully married as claimed and would presumably have been required to show marriage certificates. As such the finding that the certificates were obtained solely to enable this application to be made clearly is not an explanation open for the Judge to make on the accepted facts.

Further the Presenting Officer at paragraph 7 of the determination made submissions regarding the lack of any evidence of the Appellant's circumstances and life in Spain.

The FTTJ makes no findings on these submissions, and has failed to make any findings as to why despite living in Spain, a clearly developed country, the Appellants were unable to provide a single piece of documentary evidence as to their living circumstances, in the form of receipts, bank statements etc, and their income and expenditure.

The Judge's simple acceptance of the sponsors oral evidence and the statement that he has seen no evidence of any alternative source of income, effectively reverses the burden of proof onto the Respondent, and in the alternative fails to satisfy the burden of proof on the balance of probabilities."

8. Permission to appeal was granted by First-tier Tribunal Judge Boyes (the date of which is obscured by the Tribunal stamp), stating:

"1. The application is in time

2. The grounds assert that the Judge erred in numerous respects;

3. 'It is respectfully submitted that in allowing the Appellant's appeal the FTTJ has failed to provide adequate reasons, failed to make findings on material facts, applied an incorrect burden of proof and has reversed the burden of proof.'

4. Having considered the grounds and the judgment permission is granted. The grounds explain in clear terms the alleged errors and I am satisfied given what I have read the Judge may have erred by failing to explain in detail why he accepted certain evidence and why he reached the conclusion that he did.

5. Permission is so granted on all matters raised".

### **The Hearing**

9. The matter came before me for hearing on 12 September 2023.

10. Ms Arif attended for the Respondent but no one attended for the Appellants.

11. The Tribunal's records were consulted and it was noted that Notices of Hearing had been served on 28 August 2023 on the Appellant's representatives, Kingswood Solicitors, by email, and on the Appellant by post to an address in Birmingham. Both the email address and postal address matched those provided to the Tribunal in the notices of appeal to the First-tier Tribunal and there were no

records before me to show that no different or updated address for either the Appellants or their representatives had been provided since. Nevertheless, I instructed my clerk to telephone Kingswood solicitors using the telephone number on the notices of appeal to the First-tier Tribunal. The call was answered; the speaker confirmed the email address to which the notice had been sent was correct but did not have an explanation for the non-attendance, saying they would 'have to get back to' the Tribunal, despite it being explained that the call was taking place in the courtroom with the hearing ready to proceed.

12. As the Notices of Hearing had been correctly served in accordance with both the representatives' email address (confirmed by telephone to have been correct) and Appellants' postal address, and as no explanation for the lack of attendance had been provided despite a phonecall having been made to elicit one, I was satisfied that it was both in the interests of justice and in accordance with the overriding objective in rule 2 of The Tribunal Procedure (Upper Tribunal) Rules 2008 for the hearing to proceed.
13. Ms Arif made submissions, adding little more to the grounds as they had been stated in the application for permission to appeal dated 4 May 2023. The only additional points were as follows.
14. I asked whether there was any documentary evidence before the Judge concerning the Sponsor's name change. Ms Arif said no, the only evidence was oral; the First Appellant had sought to argue that, as she had gone to live in Spain, she would have had to have provided the marriage certificate at the time but no documentary evidence of this was submitted either; it was the Respondent's case that the altered name raised the question of the genuineness of the marriage itself.
15. I asked Ms Arif to take me to the document said to be the marriage certificate, because the translated document described as such in the Appellants' bundle appeared to a document from the Spanish Civil Registry translated into English describing the marriage rather than a certificate from Pakistan where the marriage was said to have taken place. Ms Arif said that was indeed the document being referred to and it was the only certificate before the Judge concerning the marriage. I asked her if there was any part of the Judge's decision that discussed this; she said no and that this underlined the Judge having given inadequate reasons for finding in the Appellants' favour. She referred me to the Judge's decision at [11] in saying:

"I find that on the balance this is a reliable marriage certificate which reflects a genuine marriage. I am satisfied of such because there are a number of corroborating documents such as the family registration certificate [AB7], birth certificates, and certificate of residence [AB14]"

16. She said it is the Respondent's usual position that family registration certificates are not reliable evidence of relationship because the information in them is provided by the persons themselves and so is not independent; the same applied to the birth certificates and certificate of residence in this case.
17. I said when reviewing the papers, I had seen two family registration certificates and asked Mrs Arif to take me to the one cited by the Judge in [11] as appearing at AB7. Assuming 'AB' meant 'Appellant's Bundle', this document was a family registration certificate showing the First Appellant and Sponsor as husband and wife and the Second and Third Appellants as their two children with no other children being stated. I asked whether a second family registration certificate

appearing in the papers (at page 39 of the Respondent's bundle) had been discussed in the Judge's decision, as this showed the First Appellant and Sponsor to have four additional children; she said no. She said these matters indicated that the Judge had not properly considered all of the evidence before him, had not provided adequate reasons for his findings and had failed to make findings on material issues.

18. Mrs Arif asked that the Judge's decision be set aside and the matter be remitted back to the First-tier Tribunal for a de novo hearing. At the end of the hearing, I reserved my decision.

### **Discussion and Findings**

19. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.
20. The Judge's decision is brief, amounting to 14 paragraphs.
21. The Judge correctly sets out in [1] the basis for the appeal before correctly summarising the reasons for the Respondent's refusals in [3] and [4]. Beyond what is said in these paragraphs, and a case cited at [12], I cannot see that the Judge has set out what the applicable law or rules is/are and what the Appellants each have to show, nor what the standard of proof is or where the burden lies. This is important given the Respondent claims the standard and burden were wrongly applied, which I discuss below.
22. The Judge goes on to describe the evidence before him at [5]-[8], including the Sponsor's oral evidence and parties' submissions.
23. At [10] the Judge says he has assessed all of the evidence in the round, before going on to make his findings in [11] to [14].
24. At [11] he says:

"In respect of the First Appellant I have seen the marriage certificate. It is accepted by the Appellant that it post-dates the marriage some 27 years. The explanation in evidence is that it was only applied for, for the needs of the visa applications. I find that on the balance this is a reliable marriage certificate which reflects a genuine marriage. I am satisfied of such because there are a number of corroborating documents such as the family registration certificate [AB7], birth certificates, and certificate of residence [AB14]. Whilst the Sponsor has used the surname Khan and Gul Jan I am not satisfied that that is enough to outweigh the corroborative strength of the rest of the evidence".
25. As discussed at the hearing before me, the document described as the marriage certificate is not a certificate from Pakistan recording the fact of the marriage between First Appellant and Sponsor; it is a document created by the Civil Registries of Spain which sets out the contents of a 'marriage entry'. After setting out the parties to, and location of, the marriage, the document states:

"This entry is recorded by virtue of the transcription of a civil registry certificate duly legalised and translated and data sheet signed by the informant on file under No. 28786/2015, Time: 12.14, Date 28 January 2016"

26. I cannot see that the 'civil registry certificate' said to have been transcribed was in evidence before the Judge.
27. The Refusal Letter for the First Appellant criticised this document on the basis that it was created 27 years after the marriage event (which marriage is said to have taken place in 1987) and because the Sponsor's name on it did not match that on other documents provided with the application. The Judge does not describe the submissions made to him in detail but notes the Respondent's representative "submitted that the timing of the Sponsor's name change was suspicious".
28. As the question of the nature of the 'marriage certificate' was not one raised by the Respondent, I shall not take the particular point any further than to say it is very surprising that the matter was not raised by the Judge if he had carefully analysed the documents before him.
29. Turning to the finding of reliability, it is well established that a Judge needs to consider whether a document before him/her is one on which reliance should properly be placed after looking at all the evidence in the round. This was especially the case here given the specific allegations made by the Respondent that the marriage certificate could not be relied on due to it not being contemporaneous and containing details that conflicted with other evidence.
30. The witness statement of Muhammad Hussain Khan (the Sponsor) dated 7 March 2023 that was before the Judge says the marriage was not registered when it took place because Pakistan did not then have an online register for marriage and that they did not need to register it "until it was necessary for visa purposes which was also the time I applied for them to join me in Spain". The Judge at [6] of the decision records the Sponsor's oral evidence that "his wife went there [to Spain] in 2008" and at [11] refers to "The explanation in evidence is that it was only applied for, for the needs of the visa applications". He does not make a finding as to whether he accepted this explanation before going on to find the certificate to be reliable.
31. Even on a cursory glance, it can be seen that the document says it was created in 2016, which does not hold good with the Sponsor's explanation that it was needed when he applied for his wife to join him in Spain, which she did in 2008. This is a matter which should have been addressed in explicit findings by the Judge as it clearly goes to the reliability of both the certificate and the Sponsor's oral evidence.
32. However, there is no indication that the Judge looked at the certificate in any detail nor the evidence in relation to it. He does not make findings as to either the date or the names contained therein as against what was alleged by the Respondent.
33. As regards the Sponsor's name, the Judge could reasonably have been expected to conduct an analysis of which names had been recorded in which documents, and what explanations had been provided, in order to make findings as to whether a name change had taken place and if so, when and why and whether these factors affected the reliability of the evidence.

34. There is little indication that the Judge undertook such an analysis. By not doing so, he failed to address a central part of the Respondent's case which is that the certificate is unreliable due to the name stated on it not matching that recorded elsewhere. This is despite the issue having been raised clearly in the relevant refusal letter (the relevant passage of which the Judge had set out verbatim at [3]) and in submissions (set out at [7]).
35. The Judge does not discuss whether the witness statements shed any light on the matter but I cannot see that they contained any explanation as to names. At [6] the Judge records the Sponsor's oral evidence that "The Sponsor confirmed to me that he had changed his name and is now known as Muhammad Hussain Gul Jan". Whether the Sponsor discussed why and when this happened is not recorded. The timing of any change would have been important for assessing the reliability of the documents. As above, the Respondent submitted that the timing was suspicious.
36. It appears the Judge dismissed this submission because, as he says at [7], "that was not put to the Sponsor for him to comment". However, the First Appellant was alerted by her refusal letter that it was a matter that required explanation. Even if the matter of timing was not put to the Sponsor for comment at the hearing, the Judge should have made findings as to whether the names did or did not match and if they did not, whether a satisfactory explanation had been provided as to why not.
37. The Judge reasons that the marriage certificate is reliable only:

"because there are a number of corroborating documents such as the family registration certificate [AB7], birth certificates, and certificate of residence [AB14]. Whilst the Sponsor has used the surname Khan and Gul Jan I am not satisfied that that is enough to outweigh the corroborative strength of the rest of the evidence".
38. I find this reasoning to be inadequate; more was needed. Finding that the Sponsor had used two different names, it was incumbent upon the Judge to explain why he found this did not affect either the Sponsor's credibility or the reliability of the documents.
39. The Judge does not explain why the documents mentioned are found to be corroborative in any case. This is a failing and it is important because:
  - (a) As discussed at the hearing, the family registration document at AB7 referred to by the Judge is dated 15.11.18 and shows the First Appellant and Sponsor to be husband and wife, with two children, the Second and Third Appellants. However, at page 39 of the Respondent's bundle, there is another family registration certificate, this time dated 18 June 2015 showing four further children. The Judge records at [6] the Sponsor's oral evidence that "There were six children in total" and so there was cause to question the accuracy of the document at AB7. In both of these documents, the husband is referred to as Mohammad Hussain Khan which is not the name on the marriage certificate.
  - (b) The birth certificates at pages 8 and 9 of the Appellants' bundle name the father of the Second and Third Appellants as being 'Mohammed Hussain Khan' whereas the marriage certificate names the groom as 'Mohammad Hussain Gul Jan'. Neither of the certificates is contemporaneous with the birth events. It is therefore particularly difficult to see how the Judge found these documents as corroborative of the Appellants' case when on the face

of it, they support the Respondent's case. His findings that they are corroborative, without more, is therefore irrational.

40. I find these matters to be errors which are material given the marriage certificate and its alleged discrepancies is the core reason for the First Appellant's application having been refused. Had the Judge found the marriage certificate to be unreliable, it cannot be said with certainty that he would have allowed the First Appellant's appeal.

41. As to the Second and Third Appellants, the Judge's findings are as follows:

"12. In respect of the issue of dependency I have had regard to the oral and written evidence of the Sponsor. I also have regard to *M (India) v ECO (Mumbai)* [2009] EWCA Civ 1426, at paragraph 28:

"28. In reality, people's circumstances, their lives and their lifestyles are not always quite so straightforward, and any attempt to draw a bright line between determining whether an applicant has a need for material support to meet his "essential needs" and where there is recourse to support, it being unnecessary to determine the reasons for that recourse, is best considered not on the basis of hypothetical examples but on a case-by-case basis, with the benefit of clear and sufficient factual findings by the AIT."

13. The Sponsor's evidence within his witness statement is that he travelled to Spain some 6-7 time per year and would give the Appellants cash. This was unchallenged evidence. This was additional to the evidence of remittances from July 2022. The fact of those remittances was also unchallenged. The Sponsor and the Appellants tell me that that money is the only source of income they have. I have seen no evidence of any alternative source. They also tell me that the money is used towards their rent, food and clothing. I have no reason to doubt their credibility on that. I accept therefore that the Sponsor does provide financial support to the Appellants, and that the money is used for their daily essential living needs. I find that they are therefore dependent upon the Sponsor".

42. The Respondent says that the Judge makes no findings as to the submissions described at [7] that "There was not provided any information about the Appellant's domestic circumstances and so no assessment of essential needs could be made". She also says the Judge makes no findings as to why, despite living in Spain, the Appellants were unable to provide a single piece of documentary evidence as to their living circumstances, in the form of receipts, bank statements etc, and their income and expenditure.

43. The question that the Judge needed to address is arising from Appendix EU (Family permit) and the applicable definition of 'child', which states:

"'dependent' means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen..."

44. In *Latayan v SSHD* [2020] EWCA Civ 191, Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket* Case C-1/05; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket* Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal



noted in the unrelated case of Reyes v SSHD (EEA Regs: dependency) [2013] UKUT 00314 (IAC) , dependency is a question of fact. The Tribunal continued (in reliance on Jia and on the decision of this court in SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA (Civ) 1426 ):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

45. Whether the Second and Third Appellants are dependent on the Sponsor is therefore a factual question for the Judge to assess on the evidence before the Tribunal. The burden rested upon those Appellants.
46. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Instead, there is a requirement of dependency to meet essential living needs, which, as per the above case, "must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions".
47. The Judge does not state what evidence beyond the money transfers and oral evidence he relied upon in finding dependency to exist. Simply because the money transfer evidence was not challenged in itself did not mean that the Respondent accepted that evidence as proving dependency, or that dependency was in fact proved.
48. As per the definition set out above, the Appellants needed to show, on balance, not only that there was financial or other support from the Sponsor, but that without that support, and having regard to their financial and social conditions, or health, they could not meet their essential living needs (in whole or in part). I cannot see that the Judge properly addresses the Appellants' financial and social conditions or health, nor what their essential needs are, nor whether these could be met without the Sponsor's support. He simply accepts the oral and witness statement evidence at face value and says "They also tell me that the money is used towards their rent, food and clothing. I have no reason to doubt their credibility on that".
49. As set out above, I have found the Judge's findings concerning the Sponsor's credibility to be inadequately and irrationally reasoned which necessarily infects this finding too. The Sponsor was the only one to provide oral evidence.
50. Having heard the Respondent's submission that no information about the Appellant's domestic circumstances had been provided, it was incumbent upon the Judge to make a finding on this and he does not. There is no discussion of

even basic matters which can reasonably be expected to have been discussed such as where the Appellants live and who with and whether any of them work in order to assess whether the income from the Sponsor is their sole source of income.

51. The Judge stating that “I have seen no evidence of any alternative source” is said by the Respondent to show the Judge reversed the burden of proof. Without more, I cannot find that this was the case but given the Judge does not set out the applicable burden and standard of proof within his decision, it cannot be said with certainty that he was aware of it and applied it correctly. Saying he had not seen evidence of an alternative source of income is different from the question he was obliged to ask, which was whether the evidence before him was sufficient to prove dependency on balance. It is unclear how the Judge applied the correct standard of proof if there was a paucity of documentary evidence before him; he needed to make findings as to whether there was such a paucity and better explain how, notwithstanding this, he found the matter had been proved on balance in any event.
52. Overall, I find the decision as a whole lacks sufficient reasoning, which is a material error. It is well-established that reasons for a decision must be given. As per the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), heard by the then President of this Chamber as a member of the panel:
- “(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal’s decision.
- (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
53. I find the errors found infect the decision as a whole such that it cannot stand.
54. In these circumstances, given the amount of fact finding needed, I find the appropriate course of action is for the matter to be remitted to the First-tier Tribunal for hearing afresh.
55. I say for the sake of completeness that the Judge also did not address the submission made by the Appellant’s representative described at [8] i.e. “Mr Yusuf argued that there was in fact no requirement for dependency when the Appellants were members of the same household as the Sponsor”. This had been raised in the First Appellant’s notice of appeal which said she believed the refusal decision was in breach of regulation 7 of the Immigration (European Economic Area) Regulations 2016 as she considered she had proved she was a member of the same household as her husband and had been recognised by another member state to have been a family member. Even if such an argument was erroneously made (on which I say nothing), it was for the Judge to deal with it.

## **Conclusion**

56. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law.
57. Given that the material errors identified fatally undermine the findings of fact as a whole, I set aside the decision of the Judge and preserve no findings.

58. In the light of the need for extensive judicial fact-finding, I am satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Dieu.

**Notice of Decision**

59. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
60. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.
61. No anonymity order is made.

**L.Shepherd**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**15 September 2023**