



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

**Case No.: UI-2024-001587**  
**First-tier Tribunal No:**  
**EA/00903/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 July 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**BINTOU TUNKARA**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Solomon Tampuri, Legal Rep, Tamsons Legal Services  
For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 17 June 2024**

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of First-tier Tribunal Judge Morgan promulgated on 29 January 2024 (“the Decision”). By the Decision, Judge Morgan dismissed the appellant’s appeal against the decision of an Entry Clearance Officer to refuse to grant her entry clearance under the EU Settlement Scheme as the spouse of a relevant EEA citizen.

**Relevant Background**

2. The appellant is a national of Gambia, whose date of birth is 22 November 2001. On 25 May 2022 she applied for entry clearance as a close family member of an EEA national with UK immigration status under the EU Settlement Scheme (“EUSS”). She said that she had married her

sponsor in a Mosque in Gambia on 24 July 2020. They had lived together in Gambia from 5 June to 11 September 2020, and also from 28 August to 19 October 2021. The reason that she was not currently living with her partner was that she was looking after his grandmother while he was working in the UK to support them both.

3. On 15 October 2022 an Entry Clearance Officer gave reasons for refusing the application. She had stated that the family relationship with the EEA citizen sponsor to herself was that of a spouse. As evidence of this relationship, she had provided a marriage certificate and supporting documents for their marriage. It was noted that she provided a document that stated that she and her sponsor were issued with a marriage certificate which bore the serial number 0414911. However, the marriage certificate which she provided had the serial number 0420472. This cast doubt on the genuineness of the document that she had provided. Accordingly, they were not satisfied, based on the evidence she had provided in isolation, that she was a family member of a relevant EEA citizen. She had therefore not shown that she qualified for an EUSS family permit under Appendix EU (Family permit) to the Immigration Rules.

### **The Decision of the First-tier Tribunal**

4. The appeal was listed as a paper case at Taylor House on 18 January 2024, and the case was assigned to Judge Morgan to determine. In the Decision at para [5], he said that he had considered all the evidence before him, and in particular the respondent's decision, the grounds of appeal, and the appellant's documents submitted with the application. Despite directions to provide any further evidence to be relied upon, he noted that neither the appellant nor her UK sponsor had provided any further evidence in support of the appeal. At para [6], he said that in light of the absence of any further evidence from the appellant, he was not satisfied that the appellant had adequately addressed the concerns raised by the respondent in respect of the marriage certificate. In light of this, he was unable to find on the balance of probabilities that the couple had submitted a genuine marriage certificate evidencing the validity of their marriage.

### **The Grounds of Appeal to the Upper Tribunal**

5. The appellant's legal representatives settled the grounds of appeal to the Upper Tribunal. It was retrospectively submitted that, contrary to the Decision, the appellant's legal representatives had submitted a bundle of documents for the appeal comprising witness statements; a skeleton argument; additional evidence; and independent Country Reports. They had provided this bundle to the Tribunal via the email address: I.F.A. Taylor House at Justice.gov.uk. The documents were served on the Tribunal and on the Home Office Presenting Officer's Unit on 17 January 2024. The Tribunal confirmed receipt of the bundle by telephone call on the same date. In the circumstances, the Decision was not reached on a fair basis. It was only fair that the appellant's evidence should be considered in full and the appeal determined on the totality of evidence.

### **The Reasons for the Grant of Permission to Appeal**

6. On 8 April 2024 Resident Judge of the First-tier Tribunal Sean O'Brian granted the appellant permission to appeal because the appellant and her sponsor had provided in support of the appeal witness statements not submitted with the application, in which they gave an explanation for the apparent inconsistency in the marriage documents provided. It was open to the Judge to reject the explanation. However, given what the Judge said in para [5], it was arguable that the Judge had overlooked the witness statements completely.

### **The Hearing in the Upper Tribunal**

7. The hearing before me fell into two parts. In the first part, I determined whether an error of law was made out, and in the second part, having found in the appellant's favour on the first issue, I heard submissions from the representatives as to how the decision under appeal should be remade.

### **Reasons for Finding an Error of Law**

8. When granting permission to appeal, Resident Judge Sean O'Brian was apparently satisfied that the factual basis of the appeal was made out. I am also satisfied of this having conducted my own investigation. Ms Isherwood, who did not oppose the appeal on error of law grounds, acknowledged that the Home Office Presenting Officer's Unit had received the appellant's bundle on 17 January 2024 - the day before the appeal was listed for disposal at Taylor House. I checked the cases that were assigned to Judge Morgan on 18 January 2024, and I found the appellant's bundle in the file for EA/00903/2023. It had been uploaded to this file on 18 January 2024, whereas the respondent's bundle was uploaded the day before. Thus, it is possible that the appellant's bundle was missing from the file when Judge Morgan first looked at the file on the morning of 18 January 2024. But it was clearly uploaded to the file in the course of the day, and it is also clear that the Judge did not consider the contents of the appellant's bundle when determining the appeal.
9. Accordingly, as Ms Isherwood readily conceded, the decision of the First-tier Tribunal contains a material error of law, such that it must be set aside and remade.

### **Discussion and Findings on Remaking**

10. The explanation for there being two different serial numbers on two different documents relating to the marriage is to be found in the witness statements of the appellant and the sponsor. For present purposes, it is only necessary to refer to the explanation given by the appellant, as it is identical to the explanation given by the sponsor.

11. She explains that they got married in a mosque on 24 July 2020, and they were issued with a marriage certificate with the reference number SN 041911 by the Banjul Magistrate's Court. Because they were applying for a UK visa, they also went to the Registrar of Marriages in Banjul to register their marriage. They were issued with an official marriage certificate with a reference number 0420472. When they made her application for entry clearance in May 2022, they submitted the official certificate from the Registrar of Marriages, as they were informed that some countries did not accept Nikah marriage certificates. They mistakenly quoted the Nikah certificate number even though they had provided the certificate from the Registrar of Marriages in support of the application. In hindsight, they should have included both certificates.
12. I consider that the appellant has given an entirely credible explanation for the apparent discrepancy identified in the refusal decision. The couple were issued with a marriage certificate for the religious ceremony performed in a mosque on 24 July 2020, and they were issued with a separate marriage certificate when they registered their marriage three days later. In effect, they first got married in a mosque, and then they underwent a civil marriage at the Registry Office. This explains why there are two different reference numbers for the two different marriages, rather than there being a single reference number for a single marriage event.
13. Ms Isherwood submitted that it was suspicious that the couple had obtained a civil registration of their marriage within three days of their religious marriage, rather than shortly before the appellant had made her application for an EUSS family permit in May 2022.
14. However, it is apparent from the chronology that at the time of the marriage the sponsor had not yet obtained a grant of pre-settled status, and so while the couple may have hoped that the appellant would be able to join the sponsor in the UK sooner rather than later, the timing of her entry clearance application was going to depend on how matters ultimately panned out.
15. Accordingly, I do not consider that there is anything suspicious in the fact that the appellant did not seek to take advantage of the civil registration of their marriage until nearly two years later.
16. The sole issue raised in the refusal decision is the validity of the marriage certificate provided with the application, and that question has been satisfactorily resolved by the evidence to which I have referred. Accordingly, this appeal is allowed.

### **Notice of Decision**

**The decision of the First-tier Tribunal contained a material error of law, and accordingly the decision is set aside and remade in the appellant's favour with the consequence that the appellant's appeal**

**against the refusal of entry clearance as a spouse under the EU Settlement Scheme is allowed.**

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
1 July 2024

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed this appeal on remaking, I have given consideration as to whether to make a fee award in respect of any fee which has been paid or is payable, and I have decided to make no fee award as the appellant needed to bring forward further evidence in support of her appeal in order to succeed in her appeal, and this evidence was not provided to the First-tier Tribunal within the stipulated time limit.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
1 July 2024