



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002180

First-tier Tribunal No:
EA/01335/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE SECRETARY STATE OF THE HOME DEPARTMENT

Appellant

and

CHAYME BELHADJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr S. Walker, Senior Home Office Presenting Officer

For the Respondent: No representation

Heard at Field House on 26 July 2024

DECISION AND REASONS

Introduction

1. The Appellant in these proceedings is the Secretary of State for the Home Department, but for continuity with the decision of the First-tier Tribunal, I shall refer to the parties as they were in that hearing.
2. The Respondent has appealed against the decision of First-tier Tribunal Judge Easterman (hereafter “the Judge”) promulgated on 20 March 2024 which allowed the Appellant’s Appendix EU appeal.

3. Initially permission was refused by Judge Thapar (on 26 April 2024) before permission was granted by Deputy Upper Tribunal Judge Lewis on 26 May 2024.

Relevant background

4. The Appellant is a Moroccan national, born in November 1993.
5. The Appellant first entered the UK on 20 February 2014 as a student. The evidence in the Respondent's bundle shows that she re-entered the United Kingdom again as a student on 8 April 2015, 27 January 2017 and 6 October 2020.
6. The evidence also shows that the Appellant was last granted Leave to Remain from 14 February 2022 until 7 September 2022.
7. The Appellant claims to have married Mr Elias Zarrouq (an Italian national, born in May 1994) (and hereafter "the Sponsor") by way of a proxy marriage on 23 October 2020. The Appellant further claims to have started living with her husband from 1 November 2020.
8. On 2 March 2023 the Respondent refused the Appellant's application made under Appendix EU of the Immigration Rules on the basis that the Appellant had failed to evidence that her husband was a *relevant EEA citizen* (as defined in the rules) prior to the *specified date* of 31 December 2020.

The decision of the Judge

9. The initial hearing was heard on 23 October 2023: on that occasion the Appellant attended the hearing and told the Judge that her husband was not able to attend the hearing because he was in Italy looking after his sick mother.
10. During this initial hearing, the Presenting Officer (Mr Williams) raised a preliminary issue with the Judge in relation to the fact that the marriage certificate (which is said to confirm a proxy marriage carried out on 23 October 2020) records the Sponsor's Italian ID card number which is the same as the number as the ID card issued on 9 April 2021.
11. Mr Williams therefore questioned whether it was possible that the Sponsor would be issued with an identity document in 2021 that bears precisely the same ID number as the earlier ID card.
12. At §6 the Judge records that he decided to adjourn the appeal on two bases: 1) the absence of the Sponsor from the hearing and the new issue raised by Mr Williams on behalf of the Respondent.
13. The resumed hearing took place on 9 February 2024; at §8 the Judge records that no one attended on behalf of the Appellant (which I have taken to mean that the Appellant herself did not attend). Earlier in the decision the Judge records that a different Presenting Officer attended at the resumed

hearing (Mr Macrae) but makes no reference to any submissions which may have been made by him.

14. At §16 the Judge expressed some disquiet at the fact that the Appellant had not attended the resumed hearing and had not sent in any further documentation of the sort which the Judge had outlined in his directions issued in October 2023. The Judge was satisfied that those directions had in fact been sent to the Appellant and also noted that the directions have been given orally in the hearing.
15. However, at §17, having expressed serious concerns about the absence of the Appellant and any further evidence, the Judge went on to conclude that the documentary evidence was nonetheless sufficient to show that the Sponsor was an Italian citizen as early as 2013 and held a valid Italian passport through until 2023.
16. In the same paragraph, the Judge refers to the grounds of appeal in which it was asserted that the Sponsor had been issued some form of settlement under Appendix EU.
17. In respect of the new issue raised by Mr Williams, the Judge decided that it was difficult to see what relevance the ID number issue had and neither side had been in a position to tell the Judge whether Italian identity documents continued to use the same number or whether they changed with each iteration of the card.
18. The Judge therefore allowed the appeal under Appendix EU.

The error of law hearing

19. The error of law hearing was conducted in person at Field House in London. The Appellant again did not attend the hearing and nor did the Sponsor. I checked the CE file details relevant to the Appellant and also with the Upper Tribunal's administration and I was content that the notice of hearing and relevant papers had been sent to the address and email address provided by the Appellant.
20. There was no recorded phone number and so no other checks could be made with the Appellant.
21. On the basis that the records showed that the relevant notice of hearing had been sent to the contact address as given by the Appellant, I was satisfied that proper service of those documents had been made and I therefore decided to continue with the appeal hearing in the Appellant's absence.
22. I heard brief oral submissions from Mr Walker who emphasised the two main grounds of appeal raised by the Respondent: namely that the Judge had materially erred in fact by proceeding on the basis that the Appellant's husband had been granted permission to stay in the UK under Appendix EU and that the Judge had failed to lawfully decide the issue raised by Mr

Williams in respect of the number on the identity card and the marriage certificate.

23. Having heard those submissions, I indicated to Mr Walker that I considered that the Respondent had established that the Judge had materially erred in law.
24. Mr Walker then addressed me on remaking the decision which I have decided to do without adjourning for a further hearing in light of the Appellant's repeated failure to engage with Tribunal proceedings.
25. In respect of the remaking, I informally reserved my decision which I now give with reasons.

Findings and reasons

26. In respect of the first ground of challenge, relating to the Judge's apparent acceptance that the Sponsor had settlement under Appendix EU, I find that the Judge did materially err.
27. In the hearing Mr Walker confirmed there was no evidence on the Respondent's system that the Sponsor was ever issued permission to stay under Appendix EU. I also find that there is no indication at all in the judgment as to how the Judge thought that the Respondent had accepted this. As I have already detailed, there was a Presenting Officer at the resumed hearing but the Judge made no record at all of whether this point was put to the Presenting Officer as it should have been.
28. In any event, I find that this particular aspect of §17 does not even constitute an actual finding. The Judge's observation is expressed in the following way:

"...It also seems that the Respondent has separately accepted that if as is suggested in the grounds of appeal, that the Sponsor husband was indeed issued some form of settlement under the E.U. Settlement Scheme..."
29. It is wholly unclear what the Judge means in this sentence and I find that it simply cannot stand as a finding that the Sponsor was in fact granted settlement under the Appendix EU scheme.
30. I have also had sight of the evidence relating to the Sponsor's Appendix EU application at page 37 of the third digital bundle: this is not confirmation that the Sponsor was granted status but a letter from the Respondent indicating that they had not been unable to contact the Sponsor despite attempts made in 2022.
31. I therefore find that the Judge appears to have made an irrelevant/partial finding which cannot bear to the question of whether the Sponsor was residing in the UK prior to 31 December 2020 and that this is material to the reasoning expressed at §17.

32. I also conclude of my own motion that if the Judge was unsure about whether the Sponsor had indeed been granted a form of status under Appendix EU (which is what one reading of §17 suggests) then he should have put that to the Presenting Officer either at the initial hearing or at the resumed hearing. The failure to do this also constitutes procedural unfairness.
33. In respect of the second ground and the Judge's engagement with the point relating to the Sponsor's Italian identity document number, I also find the Judge materially erred.
34. Again there is real ambiguity in the logic deployed by the Judge in §17:
- "...I have considered whether the matters raised by Mr. Williams with regard to the identity card and the marriage certificate sharing the same numbers, even though the former was issued six months after the latter, but given that the Sponsor is an Italian citizen, it is difficult for me to see what relevance this can have, particularly when neither side are in a position to tell me whether Italian identity documents continue, when re issued, to retain the same number, or whether they change with each iteration of the card."*
35. In the grounds of appeal the Respondent asserts that the apparent difficulty with the ID number recorded in the marriage certificate (which was issued before the 2021 Italian ID document) relates to a challenge to the claim that the Sponsor was in fact an Italian citizen prior to 31 December 2020. In his oral submissions Mr Walker submitted that the point also went to the reliability of the marriage certificate.
36. There is a real lack of detail in the judgment as to how the case was in fact put to the Judge at the resumed hearing. The Judge has made no reference at all to submissions which presumably were made by Mr Macrae during that hearing. Mr Walker asserted that he had not been able to find a hearing note from Mr Macrae and therefore was unable to assist the Upper Tribunal any further which further compounds the lack of clarity.
37. In assessing this ground I have had sight of the Judge's directions which are dated 23 October 2023. At paragraph 2 of the note, the Judge records that Mr Williams wished to raise a new issue which related to the reliability of the record of the Appellant's marriage.
38. It is therefore clear that this was the way the Respondent put the point to the Judge at the initial hearing.
39. Looking back to §17 it is difficult to understand why the Judge was unclear as to the relevance of the Italian ID document number issue as raised by the Respondent bearing in mind that the Judge noted the particular point when issuing the directions in October 2023.

40. There is no indication that Mr Williams asserted that the marriage document was a forgery and therefore as a matter of law the burden was not upon the Respondent to prove that the document was false.
41. The Judge therefore materially erred in failing to make any findings at all as to the reliability of the marriage certificate despite the issue being flagged up by the Respondent at the initial hearing. The Judge also materially erred in effectively finding that there was a neutral burden on both parties when it came to the question of the impact of the Italian ID number.
42. The burden of proving the case rested upon the Appellant which included establishing, on balance, that the documents which she had provided were reliable. The Judge therefore materially erred in failing to make a clear finding as to the Italian ID number issue which would have had to have taken into account that the Appellant and Sponsor did not attend to provide further evidence and that they did not take the opportunity to provide any further documentation despite the directions.
43. I therefore find that the decision of the Judge should be set aside in its entirety.

Remaking the decision

44. I have decided that the decision should be remade on the papers bearing in mind the Appellant's disengagement with these appeal proceedings.
45. I have taken into account the Respondent's bundle as well as the material provided by the Appellant to the First-tier Tribunal (the three digital bundles of 50, 50 and 42 PDF pages) and assessed the issues at the balance of probabilities.
46. I have decided that the absence of the Appellant and Sponsor from these proceedings is materially significant as no good reason has been given.
47. In respect of the Novus Leisure contract, I note that the contract simply states that the Sponsor had been employed from 28 December 2019 but is not itself dated and provides no other useful information. I have decided not to give the document weight under the circumstances looking at this piece of evidence in the round.
48. I therefore conclude that the Appellant has failed to establish that the Sponsor was residing in the UK within the meaning of the definitions in Annex 1 as a *relevant EEA citizen* prior to 31 December 2020.
49. I also conclude that the marriage certificate is unreliable bearing in mind the parties' absence from the proceedings and the ID number issue which the Appellant has not rebutted as she could have done through documentary or even oral evidence.

50. Under these circumstances I am also not prepared to give material weight to the scanned evidence purporting to show that the Sponsor has an Italian passport or the other paper ID.
51. The Appellant has therefore also failed to establish that she is the *family member of a relevant EEA citizen*.

Notice of Decision

The decision of Judge Easterman is set aside in its entirety and the Appendix EU appeal is dismissed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2024