



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002933

First-tier Tribunal No: EA/08712/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 28 October 2024**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**CHAUDHRY MUKHTAR AHMAD CHEEMA
(no anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Sponsor

For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 22 October 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his application under the EU Settlement Scheme (EUSS).

2. The appellant is a national of Pakistan born on 2 February 1964. He made an application, on 26 February 2021, for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules, as a "family member of a relevant EEA citizen". The relevant EEA citizen was his son-in-law, Mr Itezaz Zafar, an Italian national, who was married to his daughter Sunbar Farzeen. The appellant's application was refused on 22 August 2022 on the grounds that the respondent was not satisfied that he was a "family member of a relevant EEA citizen". The respondent

was not satisfied that the appellant had provided the required evidence of relationship to show that he was a family member of the sponsor. The evidence produced by the appellant of the relationship consisted of one Pakistani birth certificate for the sponsor's spouse and one Pakistani marriage certificate for the sponsor and his spouse. The respondent noted inconsistencies in the evidence and noted that the birth certificate showed the birth as registered 23 years after the actual date of birth. In the absence of evidence from the competent authorities in Pakistan to confirm that late registration of birth was acceptable or what evidence of birth was provided to those authorities as part of that late registration, the respondent was not satisfied as to the relationship between the appellant and the sponsor.

3. The appellant appealed against the respondent's decision, suggesting in his grounds of appeal that a letter from NADRA had been produced to explain why his daughter's birth was registered late. The appellant produced an appeal bundle for the appeal.

4. The appeal was decided on the papers before the First-tier Tribunal without an oral hearing, at the appellant's request. In a decision promulgated on 16 February 2023, First-tier Tribunal Judge Jepson dismissed the appeal. In so doing he noted that there were various copies of the sponsor's wife's birth certificate with different entry dates and issue dates, as well as a typed document headed 'Office of the Executive District (Health) Gujranawal' which appeared to be an application to amend a date on one of the birth certificates but which did not state what the error was and what the correct date ought to be. The judge noted that that document contained a stamp with a date of 10 September 2022, but another, almost identical document, was dated 8 June 2021. The judge also noted that there was a photograph of a single page of a family registration certificate which included the appellant's daughter but not the appellant, and which was very poor quality and hard to read. He noted that there was no sign of the letter referred to in the appeal form from NADRA. In the absence of any explanation for the changes in the documents and in the absence of further evidence to show that the appellant and 'her' daughter were related, the judge was not satisfied as to the family link. He found that the appellant had failed to show that 'she' was the family member of a relevant EEA national. The judge accordingly dismissed the appeal.

5. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had failed to take into account the letter from NADRA, which was the letter from the Union Council, the issuing body for the birth certificates, which was in the bundle.

6. Permission was granted in the First-tier Tribunal and the matter came before me at a hearing. The sponsor, Mr Zafar, attended together with his wife. He was not legally represented. He was assisted by a court-appointed interpreter.

7. I asked Mr Zafar to show me the letter from NADRA which was referred to in the grounds of appeal. In response, he produced various copies of his wife's birth certificates and the original document headed 'Office of the Executive District (Health) Gujranawal', including a further copy of the birth certificate dated October 2024 and an affidavit from his wife dated October 2024. The latter two documents clearly post-dated the appeal before Judge Jepson and I asked again where was the NADRA document which was said to have been before the judge. Neither Mr Zafar nor his wife appeared to be able to tell me which documents had been before Judge Jepson.

8. Ms Newton made her submissions before me. She referred to the judge's repeated references to the lack of evidence before him from a competent authority in Pakistan

to show that the late registration of the sponsor's wife's birth was valid and she submitted that there was still no evidence from NADRA. She submitted that the appellant had failed to file and serve conclusive evidence which was required to show that he was related as claimed to the sponsor. The family certificate in the appeal bundle was, in isolation, insufficient to establish the relationship, given the different dates in the various documents.

Discussion

9. There is a lack of clarity as to what was the letter referred to in the appellant's grounds of appeal before the First-tier Tribunal as the NADA letter explaining the late registration of the sponsor's wife's birth certificate. Judge Jepson found there to be no such letter before him and, indeed, I cannot find any such letter in the documents available to me. Despite my repeated requests to Mr Zafar at the hearing to point out the NADA letter which was referred to in the grounds of appeal to the First-tier Tribunal he did not point to a specific document but rather simply produced copies of the birth certificates and the original letter from the Office of the Executive District (Health) Gujranawal.

10. The grounds seeking permission to appeal Judge Jepson's decision appear to suggest that the relevant letter was that from the Union Council. It seems to me that that must be the document from the Office of the Executive District (Health) Gujranawal which confirms the correction of the date in the birth record. I am assuming, therefore, that that is what is referred to in the grounds as the NADA letter. Judge Jepson considered that document at [13] and [14], noting that there were two copies before him with different dates. He noted that the document was a response to an application to amend a date on a birth certificate, but it did not explain what error was corrected, why the error arose and what the correct date ought to be. That is, indeed, the case.

11. Nevertheless, what the judge did not consider was that the letter does state that Sunbal Farzeen is the daughter of the appellant and in the circumstances there was no proper assessment of the weight to be attached to that letter. That alone would not be any reason to consider that the judge had materially erred in his decision, given the other concerns he had about the documents. However, there are further more serious errors made by the judge in relation to the documents before him, which cannot be overlooked.

12. Firstly, as is apparent from [15], [18] and [21], the judge clearly considered the appellant to be female. The relevance of that is that he was looking for a female in the family registration certificate and he found at [15] and [22] that the appellant was not mentioned in the document. That is wrong, as the male appellant does appear in the family registration certificate, as Ms Newton conceded. As such the judge was wrong to find that the only evidence of the relationship between the appellant and the sponsor's wife were the three birth certificates with different dates. Secondly, the judge was concerned that there were three different birth certificates with different dates, noting at [11] that one bore the entry date of 30 January 1988 and a registration date of 1 September 2022, at [12] that a further copy had the respective dates as 30 January 1988 and 8 June 2021 and a third one bore the dates as 20 November 2009 and 9 March 2021. However again that was wrong as the third document bearing the dates 20 November 2009 and 9 March 2021 was the sponsor's marriage certificate and was not a birth certificate. The three copies of the birth certificate all had the same date of birth of 5 June 1987 and the same "entry date" of 30 January 1988. The only variance in the dates was the issue date, one being 8 June 2021, another 1 September 2022 and a third 20 September 2023. At the hearing the

sponsor produced a further copy dated October 2024. Clearly these were just the dates of issue of the certified copies of the original record of birth and I do not see that any concerns arise out of this. Likewise, the two copies of the document from the Office of the Executive District (Health) Gujranawa bore the different dates on which the copies were issued and certified, but were otherwise the same document with the same date at the top.

13. Ms Newton maintained that the judge had not materially erred, despite accepting that the family registration certificate included the appellant. She submitted that the family registration certificate, in isolation, was not sufficient to establish the relationship between the appellant and his daughter, that the birth certificates all contained different dates and that there was still no letter explaining why the sponsor's wife's birth was registered 23 years after her birth. However none of these submissions appear to me to be correct. With regard to the latter, I fail to see how the respondent, in the refusal decision, considered that the birth was registered 23 years late when it is clear from the documents produced that the birth was registered on 30 January 1988, only seven months after the birth, and the other dates are simply the dates when the copies of the record of birth were issued and certified. I have already addressed the three different dates in the birth certificates. As for the family registration certificate, that clearly does not stand in isolation, as it is supported by three copies of the birth registration bearing the same date of birth and date of entry in the register as well as the document from the Office of the Executive District (Health) Gujranawa referring to the sponsor's wife as the daughter of the appellant.

14. In the circumstances, it seems to me that Judge Jepson made significant and material errors about the documents and materially erred in the adverse conclusions he drew from those errors. Accordingly his decision has to be set aside.

15. As for the re-making of the decision, Ms Newton confirmed that she did not require a resumed hearing and that there was no need for oral evidence from the sponsor. She confirmed that she was content for me to re-make the decision on the evidence I had before me. She also confirmed, upon my specific enquiry, that if the relationship between the appellant and the sponsor was accepted she was content for the appeal to be allowed since no other concerns, such as issues of dependency, had been raised by the ECO in the refusal decision and she would not, therefore, require any other issues to be addressed.

16. In light of my findings above on the appellant's documents I accept that the relationship between the appellant and the sponsor has been made out. The respondent, in the refusal decision, did not take any issues with the relationship between the sponsor and his wife. The only issue was the relationship between his wife and the appellant. That relationship has been satisfactorily established on the evidence before me. Accordingly, there being no other issues of concern to the respondent as conceded by Ms Newton, I re-make the decision by allowing the appellant's appeal. The appeal is therefore allowed on the sole issue before me, namely the relationship between the appellant and the sponsor.

Notice of Decision

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. Judge Jepson's decision is set aside. I re-make the decision by allowing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 October 2022