



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004404

First-tier Tribunal No: EA/12482/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 December 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN
DEPUTY UPPER TRIBUNAL JUDGE RAE-REEVES

Between

MADDYLOVE AGYEI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Youssefian, Counsel instructed by MDL Solicitors
For the Respondent: Mr Parvar, Senior Presenting Officer.

Heard at Field House on 6 December 2024

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Bart-Stewart ("the Judge") promulgated on 31 July 2024. The Judge dismissed her appeal against the respondent's refusal of her application for leave to remain under Appendix EU of the Immigration Rules. Permission to appeal was granted by Upper Tribunal Judge Neville on 7 October 2024.

Preliminary Issues

2. Despite two sets of directions having been issued to the appellant's solicitors, the consolidated appeal bundle was only available on the morning of the appeal having been uploaded to CE-File the evening before. It had also not been properly served on the respondent. New documents were also produced by the appellant without an accompanying Rule 15(2A) application. Mr Youssefian applied to rely on the bundle. He took instructions and informed the Tribunal that his instructing solicitor had confused filing a Rule 24 response with filing the consolidated

hearing bundle. We were not satisfied that amounted to a sufficient explanation for the appellant's failure to comply with two sets of directions. The failure to file the bundle in accordance with the directions (and then to do so without properly bookmarking the pages) meant that the panel was unable to prepare for the hearing using it. This caused a delay to the start of the hearing and inconvenience to the panel and the respondent. The Tribunal must emphasise the need for procedural rigour and for the parties to comply with the Rules and Directions given and the risk of adverse costs consequences if they do not.

3. In this appeal, despite the poor excuse for non-compliance, in the absence of any application for an adjournment or costs by the respondent, we were content to proceed with the new bundle. No application was made to rely on the new documents, and these do not form part of our decision.

Background

4. The appellant is a national of Ghana who was born in 2008. She entered the UK on 23 May 2022 with an EU settlement scheme family permit to join her mother Rose Attaa, who was issued with pre-settlement status based on her marriage to Kofi Poku Agyewiaa ("the sponsor") who is a Spanish national.
5. On 17 October 2022, she applied for leave to remain under the EU Settlement Scheme, relying on her relationship with her mother. On 22 November 2022, the respondent refused the appellant's application because she had concluded that her mother's marriage was one of convenience and consequently the appellant could not satisfy the requirements of Appendix EU. This conclusion was based on admissions made by Ms Attaa during an interview with immigration officers on 10 May 2022 that the marriage was a sham, and she had paid the sponsor.

The appeal to the First-tier Tribunal

6. The appellant exercised her statutory appeal rights. She contended that the sole reason for refusal was her mother's admissions which were made when she was not in "the right state of mind" due to medical issues and because she was under pressure (Appellant's Skeleton Argument paragraph 4). She relies on the fact that her mother's pre-settled status has not been revoked.

The decision of the First-tier Tribunal

7. Under the heading 'Findings', the Judge sets out the evidence before her and at paragraph 20 makes her first finding that there is a significant inconsistency in the evidence concerning when she told the sponsor about the interview. She states, "I find it more likely that, although she had a telephone number, they were not in a relationship". She finds that her evidence about medical issues is inconsistent with her evidence relating to the GP.
8. She finds Ms Attaa's evidence to be exaggerated [21] and rehearsed [24] and gives reasons. In respect of documentation, she notes that the bank statements show numerous transfers between Ms Attaa and the sponsor but concludes that in themselves they do not evidence a marriage relationship. She refers to a utility bill, a council tax bill dated 16 July 2022 and a tenancy agreement with extension. She notes the rent exceeds the sponsor's monthly income and that "They may live in the same property". She refers to "only a few photographs" and states "I attach little weight to these documents as evidence that the parties genuinely live together".

9. She concludes that “The appellant’s mother has not given any cogent explanation for making what she now claims are false statements”. She notes that she was told that her husband had not been in the UK since 2019 but “would have known whether or not this was true if they had been living together. I do not accept that she was forced to make up something that was not true”. On this basis she finds that the respondent has discharged her burden of proof.

Grounds of Appeal

10. The Grounds are based on “*Error of approach / gap in logic / failure to take into account relevant factors / procedural unfairness*”. They set out evidence that favours the appellant. At the hearing Mr Youssefian made submissions on Grounds 1,2 and 5 with a particular focus on 5 but relies on all of them.
11. The first Ground centres on the unreliability of the answers given by the mother in the second interview. It is submitted that if the answers were not reliable, that would support the appellant’s account of why she made the admissions and undermine the only evidence the respondent relies upon to substantiate the sham marriage. The fact that she said the sponsor was in Germany would demonstrate the unreliability. This is because the Judge, it is submitted, has implicitly accepted the evidence that he was at a funeral in Manchester.
12. The second Ground relates to the significance of the sponsor working and living in the UK. It is submitted that the immigration officers lied to Ms Attaa about the sponsor having not lived in the UK since 2019 and that this gives credence to Ms Attaa’s claim that she was pressurised into saying it was a sham marriage. The appellant argues that the Judge failed to properly engage with the evidence that the sponsor had been in the UK after 2019 and that this was important in establishing that the immigration officer had lied to Ms Attaa.
13. In the third Ground the appellant submits that the Judge made contradictory findings at [26] and [27] about whether that her mother and the sponsor were living together. The appellant argues that if the is accepted Ms Attaa was living with the sponsor but still told the immigration officer he was in Germany when he was in Manchester, this speak to her anxiety, mental health, panic and fragile state of mind.
14. The fourth ground challenges the Judge’s purported failure to take into account a medical note which states that Ms Attaa had a “prolonged period, for over a week”, which the appellant argues is evidence consistent with her account that she bleeding during her second interview with the immigration officers.
15. The fifth Ground is that the Judge made a finding that little weight could be attached the sponsor’s tenancy agreement because the rent exceeded his monthly income without the point being put to him or Ms Ataa at the hearing. This, it is argued, was unfair pursuant to TUI UK Ltd v Griffiths [2023] UKSC 48 and Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201.

Discussion

Ground 1

16. Mr Youssefian submitted that the Judge found at [19] that the sponsor and Ms Attaa had given consistent evidence that the sponsor was at a funeral in Manchester on the day of Ms Attaa’s interviews with the immigration officers. This finding, he argued, undermined the respondent’s reliance on the reliability of the

contradictory answer Ms Attaa gave during her second interview when she said he was in Germany. Mr Youssefian suggested that if the sponsor was in Manchester, then Ms Attaa had no reason to say that he was in Germany and this highlighted that her answers during the second interview were unreliable thereby corroborating her account to have been unwell and feeling pressurised.

17. While it is correct that the Judge found that the sponsor and Ms Attaa had given consistent evidence on this point at [19], the Judge does not say that she accepts their evidence. To the contrary, she notes that it is surprising that the sponsor went to Manchester for a funeral of someone whose full name he did not know. Moreover, she expressly finds their evidence at the hearing to be rehearsed [24]. This was finding clearly open to her, and we consider there to be no merit in this ground.

Ground 2

18. Mr Youssefian submits that the immigration officer lied to Ms Attaa by telling her that the sponsor had left the UK in 2019 and this is relevant because it demonstrates the officer's motivation and the pressure on Ms Attaa. The allegation that the immigration officer lied to Ms Attaa is a serious one – essentially, the appellant is making an accusation of misconduct in public office – and there appears to have been no evidence before the Judge to allow her to make such a finding. In fact, we note that a GCID case note dated 10 May 2022 in the appellant's First-tier Tribunal bundle records that "NBTC [National Border Targeting Centre] check on the sponsor revealed that he has not been in the UK since 2019 and even prior to that he has been only visiting the UK for shorter periods" [HB/53]. This does not appear to be evidence that the immigration officer "lied" to Ms Attaa. In any event, it did not appear to be in dispute at the hearing that the immigration officer did tell Ms Attaa that the sponsor had left the country in 2019 and, at [12], the Judge took into account Ms Attaa's evidence that she believed that the immigration officer had a "sinister motive" and had sought to manipulate her. She also took into account Ms Attaa's explanation as to why she told the immigration officers the relationship was a sham: see [12] and [14].
19. Ultimately, while the Judge makes no clear findings on whether the sponsor has been resident in the UK since 2019, we are not satisfied that this amounts to a material error of law. We consider that it is implicit that she accepts him to be in the UK because she says that they may have lived in the same property and refers to the level of his income. If she had addressed the point expressly, even taken at its highest and found him to be in the UK from 2019, we do not believe it would have changed her conclusion on the nature of the relationship. We find that she deals fully with the circumstances of the interviews and the appellant's mother's reasons for giving the answers she did, including her finding that if Ms Attaa did live with the sponsor, she would have known whether it was true that he had not been in the UK since 2019: see [27].

Ground 4

20. This ground was also not argued by Mr Youssefian in oral submissions. We consider that the Judge adequately and fully dealt with the claim that Ms Attaa was unwell during the interview and took into account the medical evidence, including that she had a telephone conversation with her GP about PV bleeding (see [11] to [18] and [20]). It is not necessary for a First-tier Judge to expressly refer to all the evidence they have seen or considered. This ground does not therefore disclose an error of law.

Grounds 3 and 5

21. We deal with these two grounds together. Taken together, we are satisfied that they identify a material error of law in the Judge's decision arising from her consideration of the evidence of whether the sponsor and Ms Attaa lived together.
22. In respect of Ground 3, we do find it difficult to discern from reading [26] and [27] whether the Judge accepted that they lived together. At [26], the Judge accepts that they "may" live together, although she attaches little weight to the evidence, but at [27] she suggests that they do not live together, because otherwise Ms Attaa would have known whether the immigration officer's assertion that the sponsor had not lived in the UK since 2019 was true or not. It may well be that, at [26], the Judge was drawing a distinction between the two living in the same property and living there together as a couple, but it is not clear. While, on its own, we would have been unlikely to find that amounted to a material error of law. But when considered in conjunction with Ground 5, in which the appellant argues that the Judge acted in a procedurally unfair manner by making reference to the rent per month of their claimed home exceeding the sponsor's income, we are satisfied that the Judge materially erred in her approach to the evidence of cohabitation. This is a finely balanced case. However, we are just about willing to accept that if the sponsor and Ms Attaa had provided a plausible explanation about how they paid the rent for the property, that this may have led the Judge to attach more weight to the evidence of cohabitation. This would in turn may have been relevant to the Judge's findings at [27] about whether Ms Attaa would have known whether the sponsor had been in the UK since 2019, especially in circumstances where the Judge had accepted that Ms Attaa "would have been nervous and agitated" and she "may well have panicked" during her interview with the immigration officers.

Remaking

23. As the error of law identified in Ground 5 has deprived the appellant of a fair hearing, applying paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal*, we are satisfied that remittal for a de novo hearing is the appropriate course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of material errors on a point of law.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Taylor House, to be remade afresh and heard by any judge other than Judge Bart-Stewart.

V S Rae-Reeves

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 December 2024