



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000450
First-tier Tribunal no: EU/51293/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of January 2025

Before

UPPER TRIBUNAL JUDGE LANE

Between

FATOU SAHO
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Kannangara

For the Respondent: Mr Terral, Senior Presenting Officer

Heard at Field House on 3 September 2024

DECISION AND REASONS

1. The appellant is a female citizen of Gambia born on 10 November 1990. The appellant's sponsor (her claimed husband) is a citizen of Portugal who has been continuously present in the UK since 26 April 2011. The appellant's application for family permit under the EU Settlement Scheme (EUSS) to join her husband in the United Kingdom was refused on 17 February 2023. The appellant appealed to the First-tier Tribunal which dismissed her appeal. She now appeals to the Upper Tribunal. At the outset of the hearing, the advocates told me that it is agreed that the appellant and sponsor are in a genuine relationship. The main issue in the appeal is whether they are validly married as claimed.
2. Permission was granted on only two of eight grounds of appeal:

Ground [2] argues that the Judge failed to properly consider the evidence of the Sponsor's travel to The Gambia. I consider there is some merit in this assertion. First, it is not clear whether the Judge assessed relevant evidence in the round or placed weight on representations as to travel, the Sponsor's assertions in this regard, or considered the fact that the passport adduced in evidence was issued in September 2021 so would not have contained stamps as to travel before that date.

Ground [5] asserts that the Judge's findings arising from an expectation to see certain documents is procedurally unfair given the Appellant was not given an opportunity to explain the absence of such. There is also some merit in this ground given the reference to an expectation to see financial evidence (paragraph [21]). It is not clear whether the Sponsor was invited to address the absence of such documents.

3. Mr Kannangara, who appeared for the application at the Upper Tribunal initial hearing, submitted that the judge had not considered the sponsor's passport adequately. Moreover, there was no indication that the marriage certificate was not genuine; the refusal letter had raised an issue as to late registration of the marriage rather than the validity of the marriage. The appellant needed only to prove that she was the sponsor's spouse; all other observations made by the judge in his decision were immaterial.
4. Mr Terral, for the Entry Clearance Officer, submitted that the Entry Clearance Officer's review had raised the validity of the sponsor's passport which, in turn, raised a legitimate question as to whether the sponsor had been present at the wedding (2017) and the registration of the marriage (2021). The sponsor has said that he was present on both occasions but the judge had been entitled to seek proof of that claim which had not been forthcoming. Considering the evidence as a whole, it had been open to the judge to consider that the sponsor's evidence alone was insufficient. Secondly, Mr Terral submitted that at [36] the judge had reasonably raised a query over the apparent existence of two marriage registrations:

... The facts (*sic*) that two certificates have seemingly now been issued for the marriage which was registered on 29 September 2021, begs more questions than it answers. I have no understanding from the document from Chaba Baldeh or Alh MI Bah, how they could have personal knowledge of the registration of the marriage on 29 September 2021.

Further, at [40], the judge wrote:

The Court and the respondent have not seen any other proof of travel. There could have been produced photographs, boarding passes, and bank statements to show expenditure or withdrawals made overseas but this easily obtained evidence has not been provided. It has not been produced for the claimed date

of the wedding or for the claimed date of the visit to obtain the certificate (which is the least important of the two periods).

This paragraph, Mr Terral submitted, represented the central issue in the appellant to the Upper Tribunal. Ultimately, the judge had not been satisfied that the appellant had discharged the burden of proof. She had failed to adduce evidence which could easily have been provided.

5. I agree with the submissions of Mr Terral. The validity of the marriage, in particular the question of the whether the sponsor had been present at the wedding in 2017, was at issue having been raised in the respondent's review whilst the judge was entitled to have regard to the failure of the appellant to bring before the Tribunal supporting evidence (which she could have obtained) necessary to discharge the burden of proof. Accordingly, I reject Mr Kannangara's submission that the appellant was bound to succeed by establishing the validity of the marriage certificate only. As regards comments of the First-tier Tribunal judge who granted permission, I find that (i) the sponsor could have produced the (now expired) passport on which he claims to have travelled in 2017 and (ii) that there was no question of surprise or consequent unfairness in the judge's observations at [40]; it was for the appellant to come to the fact finding hearing fully prepared to discharge the burden of proof; she failed to do so. I find that the judge has not erred in law for the reasons advanced in grounds [2] or [5] or at all. He reached a decision available to him on the evidence.
6. In the circumstances, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 4 January 2025