



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

Case Nos: UI-2024-004146  
UI-2024-004147 UI-2024-004148  
UI-2024-004149 UI-2024-004150

First-tier Tribunal Nos:  
EU/50064/2022 LE/00643/2024  
EU/50065/2022 LE/00636/2024  
EU/50066/2022 LE/00637/2024  
EU/50067/2022 LE/00638/2024  
EU/50068/2022 LE/00639/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 21<sup>st</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

**AK (First Appellant)**  
**AT (Second Appellant)**  
**AT (Third Appellant)**  
**FT (Fourth Appellant)**  
**MA (Fifth Appellant)**  
**(ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Ms Appiah, Counsel, instructed by Inayat Solicitors  
For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 19 December 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify**

**the appellants. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The appellants appeal with the permission of Upper Tribunal Judge Reeds against the decision of First-tier Tribunal Judge C L Taylor (“the judge”) dated 31 May 2024.

### **The appeal to the First tier Tribunal**

2. The appellants, citizens of Pakistan, appealed against the respondent’s decision dated 19 November 2022 refusing their application for an EU Settlement Scheme (“EUSS”) family permit.
3. The appeal came before the judge on 14 May 2024.
4. The parties agreed that the issues before the First-tier Tribunal were as outlined at paragraph 5 of the First-tier Tribunal determination, which states:
  - “5. Following a case management review hearing on 26 February 2024 the issues in this appeal were agreed as:
    - (a) Whether the sponsor is married to the first appellant.
    - (b) Whether the sponsor is the father of the remaining appellants.
    - (c) Whether the sponsor was exercising treaty rights in Germany.
    - (d) Whether the appellants lived in Germany with the sponsor.”
5. In a decision dated 31 May 2024, the judge dismissed the appellants appeal.
6. The judge incorrectly records at paragraph 1 that the appellants appealed on human rights grounds. The judge also incorrectly records at paragraph 3 that the appellants assert a right to enter or remain in the UK on Article 8 grounds.
7. Under the heading “LEGAL FRAMEWORK”, the judge directed himself that the question before him was whether the refusal breaches the appellant’s right to respect for private and family life. The judge stated:
  - “7. The question is whether the refusal breaches the appellant’s right to respect for private and family life under Article 8 ECHR. That right is qualified. The appellant must establish on the balance of probabilities the factual circumstances on which they rely and that Article 8 (1) is engaged. If it is, then I have to decide whether the interference with the appellant’s right is justified under Article 8 (2). If an appellant does not meet the immigration rules, the public interest is normally in refusing leave to enter or remain. The exception is where refusal results in unjustifiably harsh consequences for the appellant or a family member such that refusal is not proportionate. I take

into account the factors set out in s.117B Nationality Immigration and Asylum Act 2002 and balance the public interest considerations against the factors relied upon by the appellant.”

8. That is incorrect. The appellants are appealing against a decision refusing their application for an EUSS family permit. Accordingly their appeal right lay under the Immigration, Citizens Rights Appeals EU Exit Regulations 2020 on the basis that the decision was not in accordance with the EUSS family permit Rules or that it breached rights they had under the Withdrawal Agreement EEA EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement. This is an unfortunate error but neither party sought to persuade me that it was a material error of law. I am satisfied that it is not a material error of law because the judge limited his consideration to the issues identified at paragraphs 5(a) and (b) of his decision.
9. The judge considered whether the sponsor was married to the first appellant at paragraphs 8 to 12 of his decision. The judge was not satisfied that the sponsor was married to the appellant because he found that the appellant and the sponsor were discrepant as to where they first met and he did not accept the marriage certificate adequately evidenced the relationship in the circumstances where it was registered fourteen months after the purported marriage.
10. The judge considered whether the sponsor was the father of the remaining appellants at paragraphs 13 to 17. The judge was not satisfied that the sponsor was the father of the remaining appellants because the remaining appellants’ birth certificates were registered after their passports were issued and the Country Policy and Information Note Pakistan: Documentation, March 2020 indicates that birth certificates were required in order to apply for birth certificates; and there was an absence of other evidence such as DNA evidence confirming paternity.
11. As the judge was not satisfied the sponsor was married to the first appellant, or the father of the remaining appellants, he dismissed the appeal without determining the other issues.

### **The appeal to the Upper Tribunal**

12. The appellants sought permission to appeal to the Upper Tribunal.
13. The First-tier Tribunal refused the appellants permission to appeal on 25 July 2024. The Upper Tribunal granted the appellants permission to appeal on 23 September 2024.
14. The grounds can be summarised as follows:
  - a. Ground 1: The judge failed to have regard to relevant evidence and matters i.e. he failed to have regard to the birth certificates of the second, third, fourth and fifth appellants issued by the hospital at the time of their birth; that the sponsor and appellants’ relationships had been accepted by the authorities in

Germany; and that birth certificates are not required to issue passports in Pakistan, but is it the family registration certificate that is required.

- b. Ground 2: The judge accepted that the sponsor and the appellants lived together in Germany but failed to adequately address why they were living together if they were not related as claimed.
15. The respondent provided a Rule 24 response which acknowledges that the judge erred by considering the matter under Article 8 ECHR. However, it was the respondent's position that the error was immaterial. As outlined above, I am satisfied that is the case.
  16. In respect of ground 1, the respondent submitted that it is a mere disagreement because the judge was not under any requirement to attach any weight to a grant of status made by Germany.
  17. In respect of ground 2, the respondent submitted that it amounts to no more than an attempt to reargue the case, because the fact that people may reside together does not mean that they are in a romantic relationship and the judge was not obliged to find that they were related.
  18. The respondent contended that the judge made rational findings sufficient for the decision to be adequately reasoned and sustainable and no material error of law is disclosed.
  19. The respondent stated that if a material error is found, the matter should be remitted to be heard afresh under the correct legal framework with no findings preserved.
  20. At the hearing I heard submissions from Ms Appiah for the appellants and Ms Nolan for the respondent and I reserved my decision, which I now give.
  21. I am satisfied that the judge materially erred in law. I will address both grounds 1 and 2 together.
  22. I acknowledge that the judge was not required to refer to every piece of evidence relied on by the appellants. However, I am satisfied that the judge failed to consider clearly relevant evidence. At paragraph 7 of the sponsor's witness statement, the sponsor states the following:

"7. In relation to our marriage certificate and its registration at the competent concerned body in Pakistan, I wish to submit that I originally belong to a Pathan (Pashto Speaking family living in the Tribal areas where people do not follow the Government rules as these were always called as Prohibited areas with exemptions, where even small children carry guns and follow their own culture and tradition as per their own territory or area and that the Police or army do not bother to enter into these territories. I submit that I was initially married to my wife (Appellant 1 Ms AK) by way of verbal agreement called verbal Nikah; verbal marriage contract which is also the case as in our religion Islam. I confirm that my marriage was arranged by my parents and we had not seen each other until the date/day of our marriage after we had verbally

accepted each other as wife and husband with the assistance of our religious scholar from our local mosque in our area. I confirm that most marriages in our tribal areas in Pakistan are the same and we do not have anything in writing or marriage contract signed between each other. However, after I came to the United Kingdom, I realised that I do not have any evidence like a marriage certificate and cannot claim or call myself as a married person; It is because our marriage was not registered in the Government papers, I realised that I should have properly registered my marriage in the Government, therefore I re-contracted our marriage on 12 March 2017 and entered this date into the Government records on 17<sup>th</sup> May 2018. Please refer to my marriage certificate, once we entered into a formal legal marriage on 12<sup>th</sup> March 2017, we applied for a certificate, issued from the Government, which confirmed the date of our marriage as legally and formally contracted and thus the certificate was registered and issued on 29<sup>th</sup> April 2019. Consequently, although I confirmed that I legally re-contracted my marriage on 12<sup>th</sup> March 2017, it was registered with the Government on 17<sup>th</sup> May 2018 and they issued our legal marriage certificate on 29<sup>th</sup> April 2019. Please refer to my marriage certificate. [The witness statement then repeats the same line]. It is for these reasons that our marriage certificate issue date comes as 29<sup>th</sup> April 2019. I confirm that I have 4 children in our marriage and we have submitted all their birth certificates and other documents all demonstrating our relationship is genuine as claimed in support of these applications.”

At paragraph 9 of the sponsor’s witness statement, the sponsor states:

“9. I further confirm that the decision maker has exaggerated that my children birth certificates are also issued after few years of their birth and that their birth certificates were not issued close to their date of birth. In relation to this, I firstly would wish to rely upon the enclosed birth certificates as issued by the hospitals, please refer to the copies as provided in the bundle. I wish to confirm that in our country, most of the people do not take registered birth certificates as it never happens that they require this for anything. Therefore, no body is bothered to take a proper registered birth certificate as people mostly would happen to need these if they wish to apply for their children to travel overseas. Therefore, I was not bothered to register the same and always used to rely upon our children birth certificates as issued by the hospital. However, after I realised and intended that I wish to bring my family to live with me abroad, I applied for their registered birth certificates from the competent Government body and it is for these reasons that their birth certificates registration is after a few years of their birth. In any event, I confirm that these certificates do not contradict any dates and do not confirm that our children were born on the dates as claimed and that they our children where these further confirm that these registered certificates were issued on the dates as written on the certificates. I therefore, confirm that these certificates are produced in good faith and do confirm the exact dates when our children were born.”

23. The birth certificates that the sponsor refers to as being issued in the hospital were in the bundle before the judge. Ms Nolan, on behalf of the Respondent, accepted that the judge did not explicitly refer to this aspect of the sponsor’s evidence or the birth certificates that were issued in the hospital. However, she submitted that it can be inferred from the determination that the judge considered both the sponsor’s evidence and the birth certificates.

24. I note that the judge records at paragraph 2 of the decision that he has considered all of the evidence. However, I am not satisfied that is the case. At paragraph 12 of his decision, the judge records that the appellants have not addressed the issue raised in the refusal letter and has not produced evidence that the late registration of the marriage is in accordance with the laws in Pakistan. At paragraph 17, the judge records that the appellants have not addressed the issue raised by the respondent in respect of the birth certificates. As outlined above both these issues are addressed in the sponsor's witness statement with accompanying documentary evidence. It is not possible for the appellants to know whether the judge accepted or rejected this evidence and if he rejected it his reasons for doing so. I am satisfied therefore that the judge did not adequately address the sponsor's evidence and/or give reasons for rejecting those aspects of the sponsor's evidence and the accompanying documentary evidence.
25. I accept that the judge was not bound to accept the first appellant and sponsor's claimed relationship because it had been accepted by the authorities in German or because the judge accepted that the sponsor and the appellants had previously lived together. However, that background clearly corroborates the appellants' accounts to be the wife and children of the sponsor and I find that the judge materially erred by failing to consider it at all.
26. Finally, I am also satisfied that the judge materially erred by failing to consider the evidence in the CPIN that supported in the appellants' account, in particular at paragraph 2.51, which supported the appellant's account regarding the issues with documentation.
27. The parties agreed that if I found a material error of law, the matter should be set aside in its entirety with no findings preserved and remitted to the First-tier Tribunal.
28. The hearing will need to be heard afresh. In all the circumstances, I accept that the proper course is to remit rather than to remake the decision on the appeal in this Tribunal.

### **Notice of Decision**

29. The First-tier Tribunal decision involved the making of an error of law.
30. I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to be heard by a different judge with no findings of fact preserved.

**G.Loughran**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: UI-2024-004146  
UI-2024-004147 UI-2024-004148  
UI-2024-004149 UI-2024-004150  
First-tier Tribunal Nos:  
EU/50064/2022 LE/00643/2024  
EU/50065/2022 LE/00636/2024  
EU/50066/2022 LE/00637/2024  
EU/50067/2022 LE/00638/2024  
EU/50068/2022 LE/00639/2024

**14 January 2025**