



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

**Case No: UI-2022-003354**  
**UI-2022-003356**  
**UI-2022-003355**  
**UI-2022-003357**  
**First-tier Tribunal No:**  
**EA/00412/2022**  
**EA/03181/2022**  
**EA/03179/2022**  
**EA/03173/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**RINKU KISHOR**  
**AND THREE DEPENDENT CHILDREN**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A. Ahmed, Senior Home Office Presenting Officer  
For the Respondent: Mr Z. Jafferji, instructed by FR Solicitors UK

**Heard at Field House on 28 November 2022**

**DECISION AND REASONS**

1. For the sake of continuity, I shall refer to the parties as they were before the First-tier Tribunal although technically the Entry Clearance Officer (represented by the Secretary of State) is the appellant in the appeal before the Upper Tribunal.
2. There has been a lengthy delay in preparing this decision, in part due to a period of illness. For this I apologise because I know that the original appellant (Ms Kishor) will have been anxious to know the outcome.
3. The first appellant ('the appellant') is the mother of the three child appellants. On 18 June 2021 she applied for entry clearance under the EU Settlement

Scheme (Appendix EU (Family Permit)) as the family member (wife) of an EEA national sponsor.

4. The respondent refused the application in a decision dated 22 November 2021 on the ground that the appellant had already been refused an EUSS family permit because it was deemed that she had submitted fraudulent documents in support of that application. The respondent noted that she had failed to address the previous concerns in the second application. Furthermore, in the application form for this application the appellant answered 'no' when asked if she had ever given false information when applying for a visa. The ECO went on to consider whether the decision to refuse entry was proportionate. In doing so the respondent said that she had considered all the relevant facts and circumstances of the case, including the seriousness of the deception and the likely impact that refusal would have on the appellant and her family members. Neither she nor the EEA sponsor had given an indication as to the impact that any refusal might have on the family. The application was refused with reference to the 'suitability' and 'eligibility' requirements contained in the immigration rules although the exact paragraphs of the rules were not cited.
5. The appeal was brought under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the CRA Regulations 2020'). The only grounds of appeal that could be argued were that (i) the decision was not in accordance with the immigration rules relating to the EU Settlement Scheme; or (ii) the decision breached rights under the Withdrawal Agreement ('WA').
6. First-tier Tribunal Judge Housego ('the judge') allowed the appeal in a decision sent on 14 July 2022. The judge summarised the evidence provided with this application for entry clearance, which included a letter from the village Panchayat dated 10 June 2021. The letter stated that there were (unspecified) mistakes in the original documents issued on 27 February 2020. New documents (marriage and birth certificates), with the same serial numbers, had been reissued on 06 May 2021 [11]. The judge noted the explanation given in the witness statements and the oral evidence given by the sponsor at the hearing. The sponsor explained that his wife did not speak English and was not educated. She used an agent to prepare the initial application for entry clearance. She used a different agent to make the second application. The second agent did not mention the problems with the first application when he completed the form [14]. The sponsor was reported to have said that they used the documents that they had for many years with the first application. He said that there had been a problem with the serial numbers because the authority now had a computerised system. This was corrected and new certificates were issued [15]. The judge put a discrepancy in the evidence to the sponsor. His witness statement said that there was an issue with the serial numbers, but the judge recorded that the letter from the Panchayat said that the certificates had been issued with the same serial numbers and that the error was with the dates. The sponsor is recorded as saying that he wished he had checked the dates of birth. He confirmed that copies of the old certificates had not been provided to compare them with the new certificates [16].
7. The judge noted that the appellant appeared to accept that 'incorrect documents' were submitted with the first application and made the following findings:
  - '29. The explanation is far from clear. If the original paper copies were used for the earlier applications, then it would not have been any

sort of computer error. Unless it be that the error was that detected by the investigator contacted the authority (sic) and was the told incorrect information because the Authority had not entered the details from those paper certificates into the database against which the old paper certificates were checked. The sponsor said that the issue was the serial numbers not the dates, but the letter from the village said it as the other way round. This is a troubling inconsistency.

30. The letter from the village authority has not been subjected to a dvr (sic). There is nothing about it that suggests that it is not genuine.

...

32. Inaccurate documents were used in the first applications. I bear in mind the inconsistency in the sponsor's evidence, but the ECO has not shown that this was the use of false documents, because the dvr (sic) is inadequate, and because the documents may have been genuine documents containing errors.

33. The ECO has not taken any point about the relationship being other than as claimed, and has not said that the Appellant who is now 21 is outwith the provisions of Appendix EU, nor that the Appellants are not dependent as claimed. Even if the documents were false documents, they go only to prove what the ECO has not challenged as the truth, that they are related as claimed. This goes to proportionality.

34. Accordingly, there is no reason to dismiss the appeals. As their family life with the sponsor is not disputed (and the sponsor is clearly exercising Treaty Rights), this means that the refusals are a disproportionate interference with their family life, even though it is not, in Article 8 terms, unduly harsh as it only continued the choice of family life for many years past. This [is] because the applications comply with the provisions of Appendix EU (see the concluding sentence of paragraph 34 of TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109).'

8. The Secretary of State applied for permission to appeal to the Upper Tribunal on the following grounds:

- (i) The First-tier Tribunal failed to give adequate reasons to explain why the DVR was inadequate or to explain how or why the judge concluded that the original documents were likely to be genuine documents that contained errors.
- (ii) The First-tier Tribunal erred in allowing the appeal on human rights grounds when this was not a permissible ground of appeal.

9. I have considered the First-tier Tribunal decision, the grounds of appeal, and the other documentary evidence before me, as well as the oral submissions made at the hearing, before coming to a decision.

## **Decision and reasons**

10. As the First-tier Tribunal judge noted, the evidence on both sides is unclear and incomplete. Despite the burden of proof being on the respondent to make out an allegation of dishonesty, I note that no representative attended the First-tier Tribunal hearing. This has not been an easy decision because neither party prepared their case adequately to provide a clear picture for the court.
11. The dates of the relevant decisions are not even clear from the evidence contained in the bundles. The appellant made an initial application for entry clearance under Appendix EU (Family Permit) on 28 July 2020. The appellant's bundle contained copies of the decisions for the appellant (04 May 2021) and the children (20 March 2021). The respondent's bundles contain copies of decisions in relation to the same application, but in a slightly different format. Those copies of the decisions are all dated 20 March 2021. The application was refused on the ground that the marriage certificate and birth certificates submitted in support were found to be false. No further reasons were given beyond that bare statement. Nor did the decision identify the relevant paragraph of the immigration rules under which the applications were refused. It is unclear whether the allegation went as far as disputing that the appellants were related as claimed merely because there was a reference to the 'eligibility' as well as the 'suitability' requirements. If the genuine nature of the relationships were disputed, it was not made clear in the decision letters.
12. A redacted copy of the Document Verification Report (DVR) dated 11 September 2020, which was relied upon to refuse the first application, is included in the respondent's bundle. But as noted in the First-tier Tribunal decision, it does not contain much information beyond stating that a Visa Support Assistant (VSA) at the British High Commission in Delhi had obtained the contact details of the Gram Panchayat in Sanjan independently from the 'ET database'. The nature of that database is unclear. The VSA contacted a named person in the Panchayat and sent copies of the marriage certificate and birth certificates submitted in support of the application to that person by email. The response was recorded as: 'All the document attached in the mail are completely false and have no evidence in the records of GRAM PANCHAYAT SANJAN' It is unclear whether this was a direct quote from the email or a summary of the response. As the judge noted, a copy of the email from the Gram Panchayat in Sanjan that formed the basis for the conclusion in the DVR was not included in the evidence. Nothing in the DVR indicated how the checks were conducted at the relevant office or explained why the Panchayat in Sanjan had concluded that the documents were not genuine.
13. Despite the central importance of the marriage and birth certificates that were submitted with the first application for entry clearance, neither party produced copies of those documents.
14. The judge noted that the sponsor's explanation as to why the documents were reissued was inconsistent. Without copies of the first set of documents it is unclear why they might have needed to be reissued. The subsequent letter dated 10 June 2021, which purported to be from the Panchayat in Sanjan, does not help to explain why they needed to be reissued either. I note that the telephone number on the top of the letter was handwritten and was not consistent with the one recorded for that office in the DVR.

15. The letter cites the same serial numbers of the children's birth certificates for the first set said to have been issued on 27 February 2020 and the second set said to have been issued on 06 May 2021. Copies of the children's Indian passports indicate that they were issued on 04 March 2020. The passports were issued a few days after the first set of birth certificates. It does not seem to be suggested that there was any inconsistency in the dates of birth recorded for the children in the birth certificates and the passports.
16. The letter purporting to be from the Panchayat in Sanjan only indicates that there might have been a mistake in the marriage certificate said to have been issued on 27 February 2020. The information recorded in the letter was that the first certificate recorded 'serial number 12 volume 4' and the registration date was recorded as 20 March 2001. The second marriage certificate issued on 10 June 2021 recorded 'serial no 38 volume 02' and the registration date was recorded as 09 June 2001. The date of marriage of 19 February 1995 was said to be the same in both certificates.
17. On the evidence produced by the appellant in support of the second application for entry clearance, it seems that the only discrepancy related to the marriage certificate. The explanation given in the appellant's witness statement was that this was an error on the part of the 'registration authority', but no meaningful explanation was given to explain how or why the error came about in the letter that purported to come from the Panchayat in Sanjan.
18. One is left with an unsatisfactory sense that there may be question marks about the evidence produced in support of the first application for entry clearance. As the judge observed, what the problem might have been is somewhat unclear, not least because the respondent has not produced copies of the documents that form the central plank of the allegations made in the first and second decision letters. The judge found that the explanations provided by the appellant and the sponsor in response to the allegation were also unclear and unsatisfactory.
19. I accept that some of the judge's findings in the final stages of the decision are brief and could have been explained in more detail. Nevertheless, when one reads the decision as a whole it is clear the judge had assessed the limited evidence produced by the parties and had taken into account the criticisms of the DVR put forward by the appellant's representative at the hearing [11][12][18]. The DVR is in a standard format. The identity of the verifying officer is not normally given. Nevertheless, for the reasons argued by the appellant's representative, and having noted that the underlying documents had not been produced, it was open to the judge to find that the DVR was 'inadequate' evidence to discharge the burden of proving that the documents produced in support of the first application were more likely than not to be false documents rather than documents that contained errors as contended by the appellant.
20. It is tolerably clear from an overall reading of the First-tier Tribunal decision that the judge considered that there were some issues with the documents that had not be adequately explained by the appellant. However, considering the limited information provided in the DVR, the lack of underlying documentation, and the absence of any argument from the respondent at the hearing, the reasons given were adequate to explain why the judge concluded that the respondent had failed to discharge the burden of proving that the documents were false.
21. I accept that the final paragraph of the decision at [34] uses language that usually relates to an assessment of family life under Article 8, and even then,

confuses some of the terminology (the test of 'unduly harsh' is only applicable in the context of cases involving deportation proceedings). However, it was open to the judge to observe that, despite the question mark raised about the marriage and birth certificates, it was not specifically disputed that the appellants were related to the sponsor as claimed. There is no specific finding that the decision amounted to a breach of Article 8 of the European Convention or was unlawful with reference to section 6 of the Human Rights Act 1998. Nor did the judge purport to allow the appeal on human rights grounds.

22. Although the reasoning in the final paragraph of the decision is rather muddled, what is clear from the first and last sentence is that, overall, the judge was satisfied that the respondent had failed to discharge the burden of proving that the applications should have been refused under the immigration rules on the ground that false documents had been produced and that no other reason had been given for refusing the applications with reference to Appendix EU.
23. I accept that some aspects of the decision are a little problematic. But having read the decision in the context of the unparticularised decision letter, which did not itself even identify the paragraph of the immigration rules under which the application was refused, and the limited evidence produced by the respondent to support the allegation of dishonesty, I am satisfied that any difficulties in the First-tier Tribunal decision are not sufficiently serious to conclude that it involved the making of an error of law that would justify setting it aside.
24. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law.

### **Notice of Decision**

The First-tier Tribunal decision did not involve the making of a material error of law

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

13 April 2023