



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

**Case No: UI-2022-005447**  
**First-tier Tribunal No:**  
**EA/50454/2022**  
**IA/02721/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**IDRIS ISMAIL FARAH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

Respondent

**Representation:**

For the Appellant: Mr Lawson, a Senior Home Office Presenting Officer.

For the Respondent: Ms Abramovic, instructed by H & Mclaws Solicitors.

**Heard at Birmingham Civil Justice Centre on 18 July 2023**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Athwal ('the Judge') promulgated following a hearing at Birmingham on 17 August 2022 in which the Judge allowed Mr Farah's appeal against the refusal of his application under the EU Settlement Scheme (EUSS) for a Family Permit under Appendix EU of the Immigration Rules.
2. Mr Farah's case is that he is the spouse of a Mrs Geele ('the Sponsor'), the relevant EU citizen, who has been granted pre-settled status in the United Kingdom, and who is a national of Norway.
3. Mr Farah is a citizen of Somalia born on 10 October 1984 who resides in Germany. His application was refused on 22 February 2022.
4. The Judge's findings are set out from [32] of the decision under challenge. The Judge refers to having received two marriage certificates one dated 5 July 2015 stating that Mr Farah and the sponsor were married in accordance with sharia law and a second marriage certificate, also dated 5 July 2015, issued by the Republic

of South Africa Ministry of Justice and Religious Affairs recording the names and dates of birth of Mr Farah and the Sponsor.

5. The Judge records that the Sponsor explained she was married in a Mosque and had a copy of her sharia marriage certificate, which was submitted, but when she was informed that that marriage certificate was not adequate she contacted the Somalian Association of South Africa who obtained a copy of the State issued marriage certificate and sent it to her.
6. The Judge records the submission being made by the Presenting Officer that Mr Farah was required to produce the original marriage certificate and not copies but claims that no authority for this statement was provided. At [36] the Judge finds that Appendix 1 of Appendix EU makes no reference to any requirement that documents need to be original documents.
7. The Judge was satisfied that Mr Farah and the Sponsor were married on 5 July 2015 in Pretoria, South Africa. The Judge noted they have two children which establishes they are in a genuine relationship after their marriage in 2015. The Judge then refers to other aspects of the evidence, attaching weight as required, before concluding at [42]:
  42. I have considered the evidence as a whole and on balance I am satisfied that the evidence provided establishes that the Appellant to Sponsor have two children together and are still in a family relationship. I acknowledge that there are no historical photographs or documents that corroborates their account of their relationship. I must however attach significant weight to the marriage certificates issued in 2015, the Norwegian birth certificate that establishes that they had a child in 2016, the acknowledgement of paternity, which was issued in 2018, and the recent photographs of the visit to Germany to see the Appellant. This evidence is more than sufficient to establish that the relationship has existed since 2015 and is genuine.
8. The application for permission to appeal made by the Secretary of State, asserts the Judge erred in law when stating that Annex 1 Appendix EU makes no reference to the requirement to produce original documents in support of any application for a family permit.
9. At (d) and (e) of the grounds it is written:
  - d) It is respectfully submitted that the FTTJ is incorrect to state that Annex 1 of Appendix EU (Family Permit) makes no reference to the requirement to produce original documents in support of any application for a family permit. Contained within the definition of "required evidence of family relationship" within Annex 1 of Appendix EU (Family Permit) is the following paragraph (emphasis added), "(a) where, in order to meet the requirements of this entry, the applicant submits a copy (and not the original) of a document (including by uploading this as part of the required application process), the entry clearance officer can require the applicant to submit the original document where the entry clearance officer has reasonable doubt as to the authenticity of the copy submitted;"
  - e) It is submitted that the FTTJ has overlooked this requirement of the Immigration Rules when finding that the Appellant is not required to produce an original of his South African marriage certificate. As a result, it is submitted that the FTTJ has materially erred by failing to correctly consider the requirements of the Immigration Rules when allowing the Appellant's appeal.
10. The grounds also argue the Judge failed to take into account the failure of Mr Farah to provide the original documents when assessing the reliability of the copy marriage certificate and failed to correctly consider the reliability of the documents in accordance with the principles outlined in Ahmed (documents unreliable and forged) Pakistan\* [2002] UKIAT 00439.

11. Permission to appeal was granted by another judge of the First-tier Tribunal on 17 November 2022, the operative part of the grant being in the following terms:
  2. The grounds assert that the Judge erred in attaching significant weight to the copy marriage certificate relied on by the Appellant to demonstrate that he was legally married as asserted [42] whereas under the “required evidence of family relationship” provision in Annex 1 of Appendix EU (Family Permit) the Entry Clearance Officer (ECO) can requires the applicant to submit the original document. In addition it is asserted that the Judge failed to apply the principles in *Tanveer Ahmed (Documents unreliable and forged) Pakistan* \*[2002] UKIAT 00439 in assessing the reliability of the documentation.
  3. For The ECO in the refusal states ” You have chosen not to provide the original marriage certificate...”. The ECO by this statement cannot be said to have required the applicant to submit the original document nor does the ECO explicitly raise any doubt as to the authenticity of the copy submitted. In an otherwise well reasoned decision it is arguable the Judge erred as asserted in failing to assess the documentation in particular the marriage certificate in accordance with *Tanveer Ahmed* principles.
  4. While there is less merit in the first ground, I do not consider it appropriate to limit the grant of permission. Permission is granted on all grounds.
12. The refusal notice, when setting out the basis on which the Entry Clearance Officer (ECO) refused the application, states:

#### Reasons for Refusal ROA

On 6 October 2021 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU(Family Permit)to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/appendix-eu-familypermit>). You can also find out more about the requirements in the guidance on GOV.UK (<https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>).

You have stated that the family relationship of the EEA citizen sponsor to yourself is spouse. As evidence of this relationship you have provided a document from the Somalian Association of South Africa. You have chosen not to provide the original marriage certificate issued at the time of the event in Pretoria when you claim to have married your purported spouse. This office would expect to see the original registered civil marriage certificate issued by the competent authorities in Pretoria along with other historic relationship documentation evidencing the event (e.g. wedding ceremony photographs etc) and your continuing relationship (e.g. evidence of communication, financial dependency etc).

As a result of the above, I am not satisfied, based on the evidence you have provided in isolation, that you are a 'family member of a relevant EEA Citizen'.

Your application is refused.

#### Discussion and analysis

13. The Court of Appeal have made it clear to both to themselves and other appellate judges that they should not interfere with the decision of a court or tribunal below unless clear legal error has been established material to the decision to allow or dismiss the appeal.

14. There is merit in the comment made in the grant of permission to appeal in relation to the first ground that the wording of the refusal cannot be said to have required the appellant to submit the original documents and nor is any explicit doubt raised as to the authenticity of the copy documents submitted.
15. In relation to the Tanveer Ahmed argument, that required the Judge to weigh up all the evidence with the required degree of anxious scrutiny and come to a conclusion on the weight to be given to that evidence, supported by adequate reasons. A reading of the determination indicates this is precisely what the Judge did.
16. This is not a strong challenge by the Secretary of State to the Judges decision. It is a week appeal that Mr Lawson was unable to better in any respect.
17. Although the Judge erred in stating there is no requirement in Appendix EU for the production of original documents, I find such error not to be material.
18. I find the Secretary of State has failed to establish legal error material to the decision to allow the appeal. It has not been made out the Judge's decision is outside the range of those reasonably available to the Judge on the evidence.
19. The appeal is dismissed.

**Notice of Decision**

20. No material legal error by the First-tier Tribunal is made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18 July 2023**