IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006187
UI-2022-006188

First-tier Tribunal Nos: EA/07475/2021
EA/10079/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

27th November 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

IFTIKHAR AHMED
BALQEES BEGUM
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: None
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 6 November 2023

DECISION AND REASONS

1. No one attended the hearing on behalf of the appellants. The day before the hearing the appellants' representatives emailed a letter to the Upper Tribunal stating:

> "Our instructions are that the Appellants do not wish to have legal representation in the hearing set for tomorrow. They request that their appeals kindly be decided based on their previous evidence and submissions already available to the Tribunal".

2. In the light of this letter I have decided to proceed.

3. By a decision promulgated on 17 June 2023 I set aside the decision of the First-tier Tribunal (Judge of the First-tier Tribunal Cohen), with no findings preserved. I now re-make that decision.

4. On 29 December 2020 the appellants, who are citizens of Pakistan, applied for an EU Settlement Scheme family permit under Appendix EU (FP) of the Immigration Rules on the basis of being family members of the spouse of an EEA national ("the sponsor"). On 2 May 2021 the application was refused because the respondent did not accept that the appellants' son was married to the sponsor and therefore the respondent was not satisfied that the appellants were family members of an EEA national or the spouse of an EEA national.

5. The only issue for me to resolve, as was made clear in my decision promulgated on 17 June 2023, is whether the sponsor and appellants' son are married, as claimed.

6. On 5 January 2015 the sponsor and the appellants' son entered into an Islamic marriage. On 24 December 2020 the sponsor and the appellants' son obtained a marriage registration certificate in Pakistan registering their UK Islamic marriage. The appellants submit that the effect of the marriage registration in Pakistan is to make their son and the sponsor lawfully married in the UK from the date of the registration (24 December 2020).

7. At the hearing on 17 June 2023 Mr Avery, who was representing the respondent, submitted that the sponsor and the appellants' son were not married in the UK as registration of an invalid marriage in the UK outside the UK does not turn the invalid marriage into a valid one. He did not accept that the registration in Pakistan meant that there was a marriage in Pakistan that the UK recognises.

8. At the hearing on 17 June 2023 the appellants were represented by Mr Abbas. Neither he nor Mr Avery were able to assist me by providing any authorities or legislation relating to the legal effect of registering an Islamic marriage that was entered into in the UK outside of the UK. I informed that parties that without any such authorities I was in difficulty in determining the issue in dispute and on that basis I decided to adjourn the case and directed the parties to file and serve skeleton arguments citing relevant legislation and authorities. I have not received a skeleton argument from the appellants who, as noted above, were not represented at the hearing. Mr Avery, on behalf of the respondent, submitted a skeleton argument, stating the following:

> "The position of the Secretary of State, as expressed at the previous hearing, is that normal private international law *lex loci celebrationis* provisions apply for the terms of Appendix EU (FP) to be met the marriage must be valid under UK law. The marriage relied on took place in the UK. To be legally valid in the UK marriages must comply with the terms of the Marriage Act 1949. The ceremony relied on by the appellant was not one that could (as accepted) be considered as being valid under UK law. It was clearly not one which meets the terms of the Marriage Act, to be a valid marriage and nothing that happens subsequently, particularly overseas can bring it within UK law. The Secretary of State relies on El Gamal v Al Maktoum [2011] EWHC B27 (Fam)".

9. Having considered *El Gamal*, I am persuaded by Mr Avery's submissions, which were relied on by Ms Cunha at the hearing before me. As explained in *El Gamal,* English law recognises the validity of a marriage conducted in an overseas jurisdiction if the ceremony complies with the requirements of that jurisdiction even if it would not have complied with the requirements in England but if the

ceremony takes place in the UK for English law to recognise it as a marriage the formal requirements of a marriage must be complied with. Accordingly, there are two questions to ask. First, did the Islamic marriage in 2015 comply with the formal requirements of a marriage in the UK? The answer to this, as accepted by the appellants, is no. Second, did the registration of the 2015 Islamic marriage in Pakistan meet the requirements for a marriage conducted in Pakistan. The answer to this is also no. The appellants have not claimed that their son and the sponsor entered into a marriage in Pakistan that complied with the requirements to marry in Pakistan; they only claim that the UK Islamic marriage was registered in Pakistan. As the appellant's son and daughter have not had a legally compliant marriage ceremony in either the UK or Pakistan, they are not married under UK law. The appellants' appeal therefore cannot succeed.

Notice of Decision

10. I previously set aside the decision of the First-tier Tribunal because it involved the making of an error of law. I now re-make the decision by dismissing the appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 November 2023