



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/05979/2020  
UI-2021-000884

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 May 2022**

**Decision & Reasons Promulgated  
On 24 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**MR. SARWAN SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The Appellant did not attend  
For the Respondent: Ms. A Everett, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals against a decision of the respondent dated 13 October 2020 not to issue him with an EEA Residence Card confirming that he is a family member of an EEA national exercising EEA Treaty rights in the United Kingdom.
2. He continues to benefit from the transitional arrangements concerned with the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations') and consequently there is a valid appeal before this Tribunal.

3. Judge of the First-tier Tribunal Meah dismissed the appellant's appeal by a decision sent to the parties on 21 September 2021.
4. The appellant was granted permission to appeal to the Upper Tribunal and by a decision sent to the parties on 16 March 2022 I set aside the decision of the First-tier Tribunal to the extent that the decision would be remade by this Tribunal, with no findings of fact preserved.
5. By means of my error of law decision I issued the following directions:

**Directions**

26. ...

- (i) The appellant is to file and serve, if he so wishes, evidence establishing the legislative basis of his proxy marriage being lawfully undertaken in Punjab, India, by 4pm on Monday 18 April 2022.
  - (ii) The appellant is to confirm whether he will or will not attend a face-to-face hearing held at Field House, such indication to be given by 4pm on 18 April 2022.'
6. Consequent to the notice of resumed hearing being sent to the parties, the Upper Tribunal received communication from the appellant on 11 April 2022 detailing that he would not attend the resumed hearing and requesting that his appeal be considered on the papers. The appellant had previously requested the First-tier Tribunal to consider his appeal on the papers and the Upper Tribunal to undertake its error of law consideration on the papers, so the approach adopted is consistent.
7. I decided that the matter should proceed to an oral hearing, as the respondent had not provided any indication that she agreed for the matter to be considered under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, which permits the Tribunal to make any decision without a hearing.

**Background**

8. The appellant is a national of India and presently aged 30. His wife, Maria Filippakopoulou Basilari, is a Greek national aged 28. Their relationship is said to have commenced in the United Kingdom in 2018 and they are said to have commenced residing with each other in 2019. Whilst both remained present in this country, they were married by proxy at a ceremony conducted in India on 4 January 2020.
9. The appellant applied for an EEA Residence Card on 7 August 2020 to confirm that he is a family member of an EEA national exercising EU Treaty rights in the United Kingdom. Accompanying the application were two P60s issued to his wife for tax years ending April 2019 and April 2020. The appellant also provided one payslip for his wife, dated 31 July 2020. Additionally, the appellant provided an English language copy of his marriage certificate issued by the Office of Registrar of Hindu Marriage.

10. The respondent refused the application by a decision dated 13 October 2020, detailing (1) that the appellant had provided no evidence that the 'marriage was performed and registered so as to satisfy the requirements of Indian domestic law', or that proxy marriages are legal in India, and (2) upon consideration of the documents provided the appellant had not shown that his EEA national sponsor is exercising EEA Treaty rights in this country.

### **Law**

11. The Citizens Directive establishes that family members of 'qualified persons' are accorded the same rights of entry and residence as their EU citizen sponsors. Such primary right was confirmed by regulation 7 of the 2016 Regulations.
12. Regulation 6 of the 2016 Regulations identified a qualified person as including a 'worker' and a 'self-employed person'.
13. 'Worker' was defined at regulation 4(1)(a) of the 2016 Regulations as being a worker within the meaning of article 45 of the Treaty on the Functioning of the European Union (TFEU). A worker was therefore a person employed, actually or potentially, under a contract of employment.
14. A 'self-employed person' was defined at regulation 4(1)(b) as a person established in the United Kingdom in order to pursue activity as a self-employed person in accordance with article 49 of the TFEU.

### **Decision**

15. The burden of proof rests upon the appellant to establish that he is a family member of a qualified EEA national. The appellant decided not to attend the hearing, either alone or in the company of his wife. He remained on notice as to the respondent's reasons for refusing his application, detailed at [10] above.
16. The appellant relies upon the documents that have been provided to the respondent and subsequently to this Tribunal.

#### *'Qualified person'*

17. Mrs. Filippakopoulou Basilari has established her Greek nationality and so the first question for this Tribunal to consider is whether she is a qualified person for the purpose of regulation 6 of the 2016 Regulations. In addition to the two P60s and the payslip provided to the respondent with the original application, the appellant relies upon further evidence including a letter from Her Majesty's Revenue & Customs ('HMRC') dated 22 October 2020 detailing Mrs. Filippakopoulou Basilari's employment history and tax payments for the tax years ending April 2019 and April 2020, a letter from R Riaz & Co Accountants, Southall, Middlesex, dated 30 April 2021 confirming that they are the accountants to Nabila Cleans Services and have been since 2008, and a letter from Nabila Dagheb in relation to Mrs. Filippakopoulou-Basilari having worked for her company since 14 July 2018.

18. The respondent's decision letter raises a general concern as to the reliability of the documents relied upon by the appellant.
19. A P60 for the tax year ending 5 April 2019 identifies Mrs. Filippakopoulou Basilari as being employed by 'GHC Cafe (UK) Limited' that tax year. The sum earned, £17,409.10, is the same as identified by HMRC in its letter of 22 October 2020 save for the fact that the HMRC letter details that the sum was earned through employment with Nabila Cleans Services. Ms. Everett relied upon there being a clear inconsistency on the face of the two documents. I observe that the appellant sought to rely upon the P60 referencing GHC Cafe (UK) Limited when applying for his EEA Residence Card. The appellant now adopts the position that any concern with the documents, including the P60, is not the result of his error.
20. The one person properly capable of explaining why a P60 was issued to her in relation to employment with GHC Cafe (UK) Limited in 2019, rather than Nabila Cleans Services, is Mrs. Filippakopoulou Basilari. She has provided a witness statement, dated 24 October 2020, which is notably silent as to the clear inconsistency. Her silence is such that this Tribunal has not been informed as to whether she has ever been employed by GHC Cafe (UK) Limited, and if so at what point in time. No explanation is given as to whether HMRC was contacted when the P60 was received so as to address the asserted error, or if such step was not taken, why. Mrs. Filippakopoulou Basilari did not attend the hearing, and so the respondent did not enjoy the opportunity to cross-examine her on this matter, nor was I able to consider any explanation provided.
21. Being mindful that the burden rests upon the appellant, and no explanation has been provided by Mrs. Filippakopoulou Basilari as to why the original P60 may be in error, I am satisfied that the appellant has not established to the requisite standard that the P60 is inaccurate. Inconsistent evidence has therefore been placed before this Tribunal that goes to the heart of Mrs. Filippakopoulou Basilari's employment in this country, significantly undermining the appellant's case. In the circumstances, I find that the appellant has not established Mrs. Filippakopoulou Basilari to have been a qualified person and so the appeal is dismissed.
22. I observe that the documents provided to this Tribunal as to Mrs. Filippakopoulou Basilari's employment are limited in nature and are of some age. The latest payslip relied upon by the appellant is dated 30 April 2021, which is over twelve months of age. The letter from Ms. Dagheb is also dated 30 April 2021. I have no statement from Mrs. Filippakopoulou Basilari confirming that she is still employed as a worker in this country, that she is self-employed or that she is presently seeking employment. There is no evidence before this Tribunal that she is presently in the United Kingdom.

*Proxy marriage*

23. As the matter is before me it is appropriate that I consider whether the marriage could permit the appellant to secure an EEA Residence Card as the family member of an EEA national if Mrs. Filippakopoulou Basilari were able to establish that she is a qualified person.
24. The appellant places reliance upon the Court of Appeal judgment of *Awuku v. Secretary of State for the Home Department* [2017] EWCA Civ 178, [2017] Imm AR 1066, where it was confirmed that a marriage by proxy will be treated as valid in England if recognised by local law. He relies upon the production of a marriage certificate issued by the Registrar of Hindu Marriage and a letter from the Civil Registrar, Mohali, Jagmohan Singh, dated 17 January 2021, in which the following is stated:

“I, the Registrar of Hindu Marriage of S.A.S. Nagar, Mohali, Punjab, India, certify that proxy marriage is valid in Punjab, India.

I confirm the marriage of Sri Sarwan Singh of Indian national to Maria Filippakopoulou-Basilari of Greek national was properly performed and registered according to the requirements of the law in India. The marriage was solemnised on 04<sup>th</sup> of January Two Thousand and Twenty and registered on 25<sup>th</sup> February Two Thousand and Twenty in the Office of the Civil Registrar of Marriages, S.A.S. Nagar, Mohali, Punjab, India.

I certified that the above which contains entries from No. 1 to 4 regarding Bridegroom and No. 1 to 6 regarding Bridegroom and Bride is true extract of all entries in the Hindu Marriage Register as per the marriage certificate. It is further certified that the Marriage of the above Bridegroom and bride has been registered by the undersigned.”

25. The Upper Tribunal confirmed in *Cudjoe (Proxy marriages: burden of proof)* [2016] UKUT 00180 (IAC) that it is for an appellant to prove that their proxy marriage was conducted in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The Upper Tribunal further confirmed that the reliability of marriage certificates and their issuance by a competent authority are matters for an appellant to prove.
26. The evidence presented by the Civil Registrar is limited to a bald assertion. This Tribunal is considering an appeal where an Indian national and a Greek national were present in the United Kingdom when they entered into their proxy marriage. As domestic Indian law is outside the knowledge of this Tribunal, the appellant was informed by the error of law decision dated 16 March 2022 that the Tribunal would be aided by the provision of further evidence:
- “23. At the hearing I considered whether to immediately proceed to remake the decision on the papers before me. The appellant presently wishes for a paper consideration. However, being mindful as to the overriding objective established by rule 2 of the 2008 Rules, I observe that at the present time the legality of the proxy marriage is supported by limited documentary evidence.

The appellant relies upon a letter from a registrar in Punjab dated 17 January 2021 detailing, inter alia:

‘I, the Registrar of Hindu Marriage of S.A.S. Nagar, Mohali, Punjab, India certify that proxy marriage is valid in Punjab, India.’

24. The Tribunal would be aided by a clearer identification as to the legislative regime existing in Punjab, India that lawfully permits (i) the undertaking of a proxy marriage, and (ii) such marriage being undertaken where both celebrants are outside of the State and outside of India. I consider that it would be fair to provide the appellant with further time to file evidence addressing the legislative basis of the Registrar’s observation, if he so wishes.”
27. The appellant has simply relied upon the marriage certificate and the Civil Registrar’s letter. He has provided no further information as to the lawfulness of his marriage in India. It is not appropriate that this Tribunal undertake its own research; it is for the appellant to establish his case on the balance of probabilities. The appellant has failed to provide this Tribunal with cogent information as to the legislative regime existing in Punjab, India, establishing his proxy marriage to be lawful under domestic Indian law. The letter from the Civil Registrar fails to provide any adequate information on this issue. I am satisfied that when applying the requisite standard of proof, the appellant has failed to establish that his marriage satisfies the requirements of the laws of India. Consequently, he is unable to satisfy the requirements of the 2016 Regulations. If I had been required to consider this issue, the appeal would have been dismissed on this ground.

### **Notice of Decision**

28. The decision of the First-tier Tribunal promulgated dated 21 September 2021 was set aside for a material error of law.
29. The decision is remade. The appeal is dismissed.

Signed: *D O’Callaghan*  
**Upper Tribunal Judge O’Callaghan**

Date: 9 May 2022

### **TO THE RESPONDENT** **FEE AWARD**

The appellant’s appeal has been dismissed. Consequently, no fee award is made.

Signed: *D O'Callaghan*  
**Upper Tribunal Judge O'Callaghan**

Date: 9 May 2022