



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

Appeal Number: OA/20915/2011

THE IMMIGRATION ACTS

**Heard at Field House
On 3 September 2012**

**Determination
Promulgated
On 10 July 2013**

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Before

UPPER TRIBUNAL JUDGE STOREY

Between

FOUZIA RIAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Ms E O'Bryan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. On 14 June 2011 she applied for entry clearance as a spouse on the basis of her marriage to her sponsor on 16 April 2011. She stated that the nika nama took place over the telephone as her husband was in the UK at that time. On 9 August 2011

the respondent refused her application pointing out that the appellant had failed to provide any satisfactory documentary evidence to show that the couple had physically met or that she intended to live permanently with the sponsor and that the marriage was subsisting, or that there would be adequate accommodation. The appellant appealed, but wished the appeal to be decided on the papers. In a determination sent on 6 January, 2012, First-tier Tribunal Judge Seifert dismissed the appellant's appeal. He was satisfied in the light of what had been said in the Entry Clearance Manager's Review and the further documentary evidence that the appellant met all the requirements of the Immigration Rules save for para 281(i)(a). Noting that the couple had conducted a "telephone marriage", he stated at [17]:

"Such a marriage is not valid under UK law. The formal validity of a telephone marriage is determined according to the laws of the countries in which both parties are physically present when the marriage takes place. Therefore, a telephone marriage celebrated whilst one of the parties is in the UK will not be valid as telephone marriages are not valid in this country."

2. Despite grounds of appeal which simply requested "a chance to provide comprehensive evidence to remove any misconceptions and assist a just conclusion", Designated Judge Coates granted permission because:-

"Although not raised in the grounds of appeal, having regard to the decision of the Outer House, Court of Session in MRA v NRK [2011] CSOH 101, it was argued the Tribunal Judge had erred in law in concluding that the parties had not contracted a valid marriage."

3. At the hearing Ms O'Bryan pointed out that according to her file the appellant and her sponsor had since married in person in Pakistan, although that was a post-decision fact not appertaining to circumstances as at the date of decision. She pointed out that the details of the telephone marriage were insufficient to enable positive findings of validity to be made, even if the marriage was valid.
4. After I heard this case the file was misplaced and it has only come to light after a search by Tribunal administration concerned with overdue determinations. Whilst the total lack of any follow-up by the appellant or her sponsor has not helped, the responsibility for the delay is mine and I greatly regret it.
5. Having considered the case of MRA V NRK, whilst it affords a useful summary of relevant authorities, it does not decide in any definitive way the general question as to the validity of telephone marriages, although in that respect it rather mirrors what is said in Dicey Morris and Collins, The Conflict of Laws 14th Edition 2006 at 17.013-17.015. However, the case also highlights that there are other components necessary to make the telephone marriage valid, e.g. a suitable wakil to act as proxy and

evidence of consent by the bride. I agree with Ms O'Bryan that even assuming there is nothing inherently invalid about a telephone marriage, I am satisfied that the appellant failed to establish that the ceremony conducted between her and her sponsor over the telephone fully complied with the law of Pakistan governing nika nama marriages.

6. For the above reasons my decision can only be that the First-tier Tribunal Judge did not err in law.
7. It may be, as intimated by Ms O'Bryan, that this appeal has been rendered academic by the fact that the appellant and her sponsor have since married in Pakistan, in person. In case entry clearance is still an issue, I would record that the respondent is bound by the favourable findings made by the First-tier Tribunal Judge as to the ability of the appellant to meet as at the date of decision all requirements of para 281 save for that relating to the validity of marriage.
8. For the above reasons, the First-tier Tribunal Judge did not err in law and his decision to dismiss the appeal must stand.

Signed

Date

Upper Tribunal Judge Storey