



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/02137/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18th June 2014

Determination Promulgated
On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

HAXIHJIA RAIMONDA

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, instructed by Montague Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Albania born on 29th January 1994. She appeals against the determination of the First-tier Tribunal dated 5th March 2014 dismissing her appeal against the Respondent's decision of 27th November 2012 to refuse entry clearance as the fiancé of Albert Mustali, the Sponsor, under paragraphs 320(7A) and 290 of the Immigration Rules.

2. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 11th April 2014 on the grounds that First-tier Tribunal Judge Devittie arguably erred in law in failing to make a finding on paragraph 320(7A) and the Judge had not adequately explained his reasons for rejecting the Appellant's claim to have a genuine and subsisting relationship with the Sponsor.
3. At the hearing before me, Ms Panagiotopoulou adopted the grounds of appeal and submitted that the Judge had failed to make findings on paragraph 320(7A), having refused the Respondent's application for an adjournment to obtain translations. The case had already been adjourned on this basis on a previous occasion. The Judge had failed to give adequate reasons for finding that the Appellant was not in a genuine and subsisting relationship and, given the abundance of documentary evidence, the Judge's decision was perverse.
4. Ms Panagiotopoulou submitted that there were also factual errors in the Judge's findings at paragraph 9(i) and (iii). The Sponsor had given the name of the person at whose wedding he met the Appellant and the Judge had failed to take into account the second time the Appellant met the Sponsor in a village (question 44 of the Appellant's interview). The documentary evidence could only have lead to one conclusion and the Judge had failed to give adequate reasons for why it did not satisfy him.
5. Mr Whitwell relied on the Rule 24 response and submitted that, at paragraph 9, the Judge found that there were unsatisfactory aspects to the evidence of the Appellant and the Sponsor and he gave adequate reasons for his decision. The documentary evidence was limited; there were photographs, but few specified dates; the Sponsor had travelled to Albania on several occasions, but there was no evidence to show he had visited the Appellant; the telephone records did not show that the Sponsor made calls to the Appellant. It was clear from the Appellant's interview that she wanted to get to the UK first before considering the issue of marriage. The interview supported the Judge's findings at paragraph 9(ii) that no wedding plans had been made. The grounds of appeal amounted to disagreements with the Judge's findings and did not disclose an error of law. The factual errors relied upon were immaterial.
6. Mr Whitwell accepted that the Judge had erred in law in failing to make findings on paragraph 320(7A) and submitted that there was sufficient evidence for me to remake the decision. The Respondent had discharged the burden of proof.
7. Ms Panagiotopoulou submitted that the decision could be remade on the evidence before me today. The Sponsor had made a statement in relation to paragraph 320(7A) on the basis of the untranslated documents. His explanation was sufficient to rebut Respondent's assertion. The Judge had failed to make clear findings on the oral evidence of the Sponsor and had failed to identify any unsatisfactory feature. On balance, there was ample evidence to establish a genuine and subsisting relationship.

Discussion and conclusions

8. I find that the Judge erred in law in failing to make a finding on paragraph 320(7A). The email submitted by the Respondent stated that the Sponsor was not registered in the Civil Status Office in Kosovo. The Internal Ministry of Albania confirmed that an Albert Mustali with a different date of birth was an Albanian national who had not applied for an identify card.
9. The Sponsor stated that the person referred to in the letter from the Interior Ministry was not him because the date of birth was different and the parents names were different. The Kosovo authorities had no influence in Zvecan which was still under the influence of the Serbian authorities. There was background evidence supporting this claim.
10. On the evidence before me, I find that the Respondent has failed to show that the Sponsor has used a false document in the application. The email was not authenticated and its provenance was unclear. There was insufficient evidence to establish the assertions in the refusal notice. The Respondent has failed to show that paragraph 320(7A) applied.
11. The Judge found that there were several unsatisfactory features in the evidence of the Appellant and the Sponsor, all of which when considered in their totality, pointed to the conclusion that the Appellant had not shown that the relationship was genuine and subsisting. This finding was open to the Judge on the evidence before him for the reasons set out below.
12. The evidence of how the parties met was vague. There were no details of the wedding they both attended, save that the Sponsor gave the name of his friend during oral evidence. The Appellant's interview and the Sponsor's statement failed to supply this information or to give any other details of the wedding.
13. All but four photographs were undated. The Facebook messages were not translated save for 31st May, 8th June and 1st December 2012 and 9th June 2013. I accept that it was not cost effective to translate them all, but the Judge could not be expected to place reliance on documents which were not translated.
14. The telephone records did not show that the Sponsor was calling the Appellant because there was no evidence to show what her telephone number was. The Sponsor claimed to have bought her a 'pay-as-you-go' telephone so that she could call him at a reduced rate. There was no documentary evidence to support this and no evidence of any telephone calls from the Appellant to the Sponsor. The top up receipts at pages 451 and 452 of the Appellant's bundle post-dated the decision and did not identify who was using the telephone or to whom calls were made.

15. The Sponsor had visited Albania on several occasions, but the stamps in his passport and his air tickets were insufficient to show that the Sponsor visited the Appellant.
16. The factual errors referred to in submissions were not material to the decision. The description of how the parties met was lacking in detail and the Sponsor made no mention of the second meeting in the village, to which the Appellant referred in her interview at question 44.
17. The Judge's reasons were set out at paragraph 9. They were consistent with the Appellant's interview and the evidence before him. The reasons were adequate to support his overall findings. The Judge considered the evidence in the round and his findings were not perverse.
18. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated shall stand.

Deputy Upper Tribunal Judge Frances
24th June 2014