



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

Appeal Number: OA/13921/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 18 July 2014**

**Determination
Promulgated
On 24th July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD, PAKISTAN

Appellant

and

ABIDA PARVEEN

Respondent

Representation:

Appellant: Ms Johnstone, Senior Home Office Presenting Officer
Respondent: Mrs U Sood (of Counsel), instructed by Matrix Solicitors

DETERMINATION AND REASONS

1. This appeal has its origins in a decision of the Entry Clearance Officer (the "ECO") for Islamabad, Pakistan dated 29 May 2013 whereby the Respondent's application for admission to the United Kingdom in the capacity of family member of a EEA National exercising Treaty Rights, under the Immigration (European Economic Area) Regulations 2006, was refused. The Respondent's ensuing appeal to the First-tier Tribunal (the

“FtT”) was allowed. The Secretary of State appeals, with permission, to the Upper Tribunal.

2. It is appropriate to highlight the terms in which the underlying application was refused by the ECO:

“The definition of ‘spouse’ in the [EEA Regulations] does not include a party to a marriage of convenience

I am not satisfied that this matter is not a marriage of convenience. This is due to your own account of your relationship

I am not satisfied that there is a continuing and meaningful relationship with your sponsor in marriage. I am satisfied that you do not intend to live with your sponsor as a marriage person. I am also satisfied that you are party to a marriage of convenience and are therefore not the family member of an EEA National in accordance with Regulation 7 of the [EEA Regulations].”

The refusal decision specified a further reason for rejecting the application, namely the absence of any evidence that the EEA national family member concerned, the sponsor, was exercising Treaty rights, with the result that he was not a qualified person under Regulation 6. This second reason was reversed on internal review and, further, was overturned by the FtT, in [23] of its determination.

3. The central issue which developed before the FtT was that of whether the sponsor had capacity to marry the Respondent. The FtT’s treatment of this issue, its consideration of the evidence bearing thereon and its findings in respect thereof feature in the grant of permission to appeal to this Tribunal. No other issue is identified. Specifically, the grant of permission to appeal concerns the FtT’s preference for the assessment and opinion contained in the “*FACE Mental Capacity Assessment*” report rather than the competing opinion expressed in a second report, that of Dr Morgan, a Highly Specialist Clinical Psychologist of Derbyshire Health Care NHS Trust. In brief compass, the question for this Tribunal is whether the FtT erred in law in according greater weight to the former report and, in doing so, whether it gave sufficient reasons for its preference.
4. At the conclusion of the hearing, I delivered an *ex tempore* judgment dismissing the appeal for the following reasons, in summary:
 - (a) Subject to the legal requirements of rationality and adequacy of reasoning, the exercise of according weight to evidence and, in particular, determining to accept one expert opinion in preference to another lay exclusively within the domain of the FtT. Whether this Tribunal would have done likewise is legally irrelevant.

- (b) It is of some significance that both reports were compiled some time after the marriage and, therefore, in considering the issue of the sponsor's capacity to marry both were backwards looking.
- (c) It is also of some significance that whereas the order of the High Court (Family Division) dated 05 February 2014 required the specified Respondents to take all reasonable steps to prevent the sponsor "from undergoing or participating in any further marriage ceremony", the application in question was adjourned generally and, in the event, stood dismissed (per paragraph 3 of the order) following the compilation of the FACE report.
- (d) The determination of the FtT satisfies the standard of adequate and intelligible reasoning. In [27], the Judge determined to accord "*considerable weight*" to the FACE report. The reasons for this are abundantly clear from [26] and [28]. The Judge clearly accepted the assessment that the previous capacity evaluation of the sponsor was unreliable, for the reasons specified: non-compliance with the Mental Capacity Act 2005 Guidance, the absence of an interpreter, the sponsor's linguistic ability and level of comprehension and the sponsor's claim that he did not fully understand the questions put to him and could not hear them properly, given his hearing defect. In [28], the Judge found the sponsor to be a credible witness and made a series of further findings of significance relating to the relationship under scrutiny. I consider that no complaint can be levelled against the Judge's treatment of the competing expert opinions and the adequacy of the reasons provided.

This disposes of the first and third grounds of appeal. As regards the second ground, there is no merit whatsoever in the complaint that the Judge erred in considering whether the marriage was one of convenience, given that this formed the centrepiece of the ECO's refusal and was, following the internal review, the only surviving reason.

DECISION

5. For the reasons elaborated above, the appeal is dismissed.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Dated: 19 July 2014