Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/01609/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 July 2015	**On 14 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

ABDELMONEM HAGAG SAYED MOHAMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – ABU DHABI

Respondent

Representation:

For the Appellant: Mr K Tait, Taits Immigration Service
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the appellant in respect of a decision made by the Entry Clearance Officer in Abu Dhabi. The appellant, who was born in April 1974, sought leave to be admitted to the United Kingdom by virtue of European Community law as a family member of a European Economic Area national, Miss H Wasiak, on the basis that they were in a genuine and

subsisting marriage, and not as the Entry Clearance Officer found, a marriage of convenience.

2. The appeal from the decision of the Entry Clearance Officer came before First-tier Tribunal Judge Quinn and led to a determination promulgated on 12 January 2015. It was the sponsor Miss H Wasiak who appeared for the appellant on that occasion and made clear representations on his behalf. The decision of Judge Quinn deals with the evidence that was before him, the relevant Immigration Rules, the burden and standard of proof, the case advanced by the appellant and the content of the refusal letter from the Entry Clearance Officer. It deals fully with the submissions made on behalf of the Entry Clearance Officer and on behalf of the appellant and then proceeds to make findings based upon that evidence.

3. Mr Tait who appears today for the appellant very helpfully produced a written skeleton argument in which he developed four discrete grounds of appeal which he supplemented by oral submissions today. He maintains that the First-tier Tribunal Judge fell into error by misconstruing or misinterpreting the evidence and that so clear were those misconstructions or misinterpretations that the conclusions he drew were flawed and so badly flawed as to undermine the determination in its totality.

4. The first error of law relied upon concerns two separate elements of post-decision evidence. These are recordings of Facebook conversations between the appellant and the sponsor between 31 January 2014 and 18 December 2014 and his complaint seems to be that no reference at all is made to those Facebook conversations in the course of the determination.

5. The second matter relied on is a series of Skype conversations between similar dates, in this instance 31 January and 18 September 2014. The judge indicates in the course of his determination at paragraph 48 that

> "I noted the conversations on Skype but these were not submitted when the applicant for leave was made and it was not impossible that Mr Mohammad had had help in typing messages to Miss Wasiak."

6. What is said in relation to that comment by the judge is that there is nothing to support the suggestion that the appellant had had assistance in typing those messages and the point made is that the volume of Facebook and Skype traffic, its intensity and its length, are such that they demonstrate a subsisting relationship between the appellant and the sponsor.

7. A point was taken by Mr Kandola on behalf of the Secretary of State that conceivably some or all of this post-decision evidence is inadmissible. It is not the purpose of the Upper Tribunal in its reviewing capacity to consider whether decisions on admissibility were rightly or wrongly made. There is no cross-appeal. For whatever reason the evidence was before the First-

tier Tribunal Judge and he considered it as part of the material which he took into account in coming to the conclusion which he did.

8. Mr Tait very fairly accepted when I suggested to him that matters of weight are entirely for the First-tier Tribunal Judge to determine. The First-tier Tribunal Judge came to the view that little or no weight ought properly to attach to these two aspects of post-decision evidence. That was an entirely lawful exercise of his discretion as a fact finding body and there is nothing in the determination which comes anywhere near being an error of law.

9. The second matter pursued by Mr Tait I can deal with more shortly. It too, I think, is post-decision in its provenance but relates to a document by a Dr Fekrya A Salana which indicates that Miss Wasiak was pregnant and miscarried on or about 2 February 2014. That document emanates from what appears to be a gynaecological practice in Cairo, Egypt.

10. Mr Tait indicates that the guidance issued for Entry Clearance Officers said that they should not consider the following matters as being marriages or civil partnerships of convenience: where there is a child of the relationship or where there is evidence to suggest cohabitation. This guidance was not breached. It is not suggested that there is a child of this relationship and the fact of pregnancy and unfortunate miscarriage is not probative of cohabitation. Furthermore, there is nothing in the evidence at all to link the fact of a pregnancy and miscarriage to the appellant being the father. I am satisfied that there is no error of law under this head.

11. The third alleged error of law is a finding on the part of the First-tier Tribunal Judge that the appellant and sponsor had no contingency plans in place in the event that the appeal against the decision of the Entry Clearance Officer did not succeed. This is to be found in paragraphs 63 and 64 of the determination.

> "63. In her evidence Miss Wasiak said that she could not live in Egypt for various reasons. It seemed to me therefore that if the appeal did not succeed there was not an intention to live together. There were no contingency plans in place.
>
> 64. Despite what was said about her condition the fact was that the medical evidence suggested that Miss Wasiak's thyroid level was normal and she had lived in Egypt for most of the year but her evidence was that she would not go to Egypt to live with her husband. This in my view undermined the credibility of the whole case. She was socially and culturally integrated in the United Kingdom and was not in my view likely to relocate to Egypt to live with her husband."

12. The argument as originally advanced by Mr Tait was that the absence of contingency plans in the view of the First-tier Tribunal Judge undermined

the credibility of the whole case. I do not consider that to be a fair reading of the determination. What did undermine credibility, in the judge's view, was that on the one hand Miss Wasiak was saying that she was in a subsisting relationship with the appellant and yet on the other she was stating that she would not live in Egypt. What the judge was drawing attention to in paragraphs 63 and 64 was the mutual inconsistencies in the various ways in which Miss Wasiak had stated the position at various times.

13. Mr Tait argued that Miss Wasiak had very rarely been in Egypt and that it was wholly wrong of the judge to conclude "she had lived in Egypt for most of a year".

14. I was taken by Mr Tait to a summary of the case and in particular to paragraph 25 which records the time that Miss Wasiak had been with the appellant in Egypt. Dates were given in April, May, July, October, and November 2013 running into March 2014 which cumulatively shows something between eight and nine months were spent by Miss Wasiak in the company of the appellant whilst in Egypt.

15. At this point somewhat opportunistically Mr Tait refined his ground of appeal to state that the judge's decision was not flawed at all, and that he was absolutely correct to say that Miss Wasiak had lived in Egypt for most of a year. He prayed that assertion in aid as demonstrating that there was a subsisting relationship between the appellant and her, otherwise why would she have chosen to spend so much time in Egypt.

16. In the circumstances in which this submission arose, mindful that it was never part of any ground of appeal, I do not consider that it is a matter which I should take into consideration this afternoon. Even if I were to do so, I am not satisfied that there is anything wrong in the way in which the judge approached the case.

17. That then brings me to the final ground of appeal, namely the manner in which Miss Wasiak corresponded with the Secretary of State in relation to her first husband. What is said by the First-tier Tribunal Judge appears at paragraph 52 of the determination which reads as follows:

> "In respect of the first marriage [in other words an earlier relationship of Miss Wasiak] she had made various allegations about her husband and had reported the issue to the Home Office. She was invited to respond within a certain time but did not do so and in fact did not respond for some considerable time. In my view this casts some doubt on her allegations about her first husband. If her concerns were genuine I thought it was more likely that she would have reacted and resolved the problem before entering into a second marriage."

18. Mr Tait has taken me through a chronology of correspondence and I need not read into this determination the dates and content of the letters. What he says is that Miss Wasiak wrote to the Secretary of State and sought to bring to her attention issues arising out of the first marriage, in particular that she had perceived herself as being a victim, used by her former husband in order to obtain residence in the United Kingdom.

20. The point made by the First-tier Tribunal Judge in that Miss Wasiak did respond and resolve the matter relate to a time after matters with her first husband had concluded, and it is said by Mr Tait that it was no longer incumbent upon her to engage with the Secretary of State.

21. I am perfectly satisfied that this was merely one of a number of matters which the judge took into account and that he gave it the weight that it properly deserved in his consideration of the entirety of the evidence. There is nothing to suggest that it was in any way determinative of his decision. Nor do I consider the fact that paragraph 52 is a shorthand or abbreviated version of what took place between the Home Office and Miss Wasiak suggests that the judge either misinformed himself or misinterpreted such evidence as there may have been. I am equally satisfied that this fourth alleged error of law is not made out and that there is nothing to indicate that there was an error of law on the part of the First-tier Tribunal Judge.

22. I should add for the sake of completeness that if any or all of the points advanced by Mr Tait this afternoon did have any merit as being arguable errors of law I do not consider that they were in any way material.

23. This determination is in my view exemplary of the full, balanced and reasoned determinations which one expects of a First-tier Tribunal Judge and cannot be criticised in any of the ways advanced this afternoon on behalf of the appellant.

24. For each and all of those reasons this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.

Signed *Mark Hill* Date 6 August 2015

Deputy Upper Tribunal Judge Hill QC