



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

Appeal Number: OA/02878/2014

THE IMMIGRATION ACTS

Heard at Stoke

On 7th May 2015

Decision and Reasons

Promulgated

On 15th May 2015

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ZUHAL ADAM ZAKRIA GARELZAIN

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mrs Stirton Thomas of All Nations Legal Services.

For the Respondent: Mr A McVeety - Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On 30th October 2014 First-tier Tribunal Judge D Dickenson dismissed the appeal against the refusal of an Entry Clearance Officer (ECO) to grant leave to enter for the purposes of refugee family reunion.
2. The basis of the refusal was the lack of evidence of marriage or of the time the applicant lived with her sponsor in Sudan and no evidence to show a pre flight relationship - 352A (i). It was also found there was

lack of evidence of contact between the applicant and her sponsor leading to doubt about the ability to satisfy 352A (iv).

3. The Judge was satisfied the parties were legally married on the basis of the marriage certificate from Sudan which confirmed a marriage on 5th March 2007. It was also found there was evidence of funds being sent by the sponsor by electronic transfer to Sudan and it was accepted the sponsor and appellant speak to each other on the telephone and communicate through Skype and other electronic means.
4. The Judge was not satisfied that the appellant intended to live permanently with the sponsor in the UK and that the marriage is subsisting. This is said to be the case for the reasons set out at paragraphs 18 - 23 of the determination.

Discussion

5. It is said the finding the parties communicate with each other and the finding they do not intend to live together is contradictory. It is accepted there was a substantial bundle of evidence of contact since 2012 which was accepted. The points the Judge considered relevant are:
 - Whilst the appellant was able to produce a marriage certificate confirming the marriage the sponsor in his asylum claim was unable to recall the date of the marriage [17].
 - The sponsor confirmed that whilst he and the appellant had married in 2007 there remained stages that needed to be completed before it could be determined as a traditional Sudanese marriage. Until the stages had been completed the parties could not live together. The sponsor said he had not been able to live with the appellant in Sudan before he left on 1st January 2010 as all such stages had not been completed. It was found implausible that for three years the sponsor was not able to pay the requisite monies in order to complete the stages when he was able to raise \$750 to pay an agent to leave Sudan. The sponsor also gave evidence to the effect he was able to raise a further \$3,500 to pay an agent to bring him to the UK from Greece indicating his priorities have not always been with his wife and the need to complete the outstanding stages of the marriage [19].
 - The sponsor claimed when in Greece he was homeless and could only telephone his wife occasionally when he had spare money yet had the ability to raise the \$3,500 to pay an agent. The sponsor had the means to have paid for telephone calls and the fact he failed to do so raised questions regarding the genuineness of the relationship [20].

- It is now claimed the various stages have been completed but no evidence was provided to show the payment of the gold required as part of the marriage process or how the sponsor was able to accumulate the relevant monetary sums for payment. Without such evidence the Judge was not satisfied the relevant stages of the marriage process had been completed and the parties therefore intended to live permanently together [21].
 - Whilst photographs of the appellant have been provided and it is impractical to expect photos of the three years of the relationship, there is no photographic evidence of them as a couple. It was found implausible that there was no such evidence, for instance of a wedding or birthday. Had there been a genuine relationship such evidence would have been retained [22].
 - There is no evidence from the appellant or sponsor's families as to the relationship [23].
6. It is arguable that the comment relating to photographs should not be determinative as it is not known if there are photographs taken, although this is not proven. Mr McVeety referred to the use of Skype and other electronic means of communication showing that photographs could be communicated but that depends if they exist. The Skype printouts have photographic images on them taken by a camera or webcam but Mrs Stirton Thomas indicated that internet access was only available in 2010 which was after the sponsor had left Sudan.
 7. The burden is upon the appellant to prove the ability to meet the requirements of the Rules which the Judge found had not occurred on the basis of the available evidence. The Judge referred to a number of matters of concern that were considered determinative even having identified a number of points in the appellants favour.
 8. The existence of communication was not disputed and demonstrates a level of commitment but was not found to be sufficient in light of above matters when the evidence is considered cumulatively.
 9. There is no contradiction amounting to legal error in relation to the findings regarding the sponsors time in Greece. Even though his life there was not pleasant he admits raising the funds and made the conscious decision to fund his wishes rather than maintain contact with his wife. The sponsor's priority was his personal desire and if his wife was called from the little money left over, as according to paragraph 8 of the grounds, this supports the sustainability of the findings in relation to priorities.
 10. The grounds confirm evidence of the finalisation of the stages of the marriage had not been provided. For whatever reason the finding this

had not been proved has not been shown to be contrary to the available evidence. The criticism of the Judge for not asking about this at the hearing is noted but the burden is upon the appellant to prove. It was being alleged the stages not previously completed had been finalised and so clear evidence of the same was required but not provided.

11. In relation to the decision under the Immigration Rules it is asserted the Judge considered irrelevant material and failed to give adequate reasons but neither is formally pleaded as such and in any event have not been shown to have arguable merit.
12. Mrs Stirton Thomas was asked if the true allegation was one of perversity which she confirmed it was. This requires proof that the decision was one no reasonable judge being informed of the true facts would reasonable be expected to make which is a high threshold. On the fact it has not been reached.
13. The decisions under the Rules have not been shown to be outside those reasonably available to the Judge on the evidence.
14. The rejection under Article 8 is also challenged but it has not been shown there is an element not considered under the Rules that requires consideration outside the Rules and as the key finding is that it had not been established that there is an intention to live together family life is not established making the decision proportionate.
15. No arguable legal error material to the decision to dismiss the appeal has been made out on the basis of the grounds and submission made.

Decision

16. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 8th May 2015