IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03102/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 November 2015	**On 30 November 2015**

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE WIKELEY

Between

MRS MARWA AL AJI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Heller, Counsel instructed by Cham Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Wright promulgated on 11 March 2015, following a hearing at Hatton Cross on 27 February 2015, in which the judge dismissed under both the Immigration Rules and on human rights grounds by reference to Article 8 ECHR, the appellant's appeal against the refusal of an Entry Clearance Officer to grant her leave to enter the United Kingdom as the spouse of a refugee.

2. There is no dispute so far as we can see between the parties in relation to the sponsor's status in terms of his nationality, date of entry to the United Kingdom, and subsequent grant of refugee status.

3. We have seen a considerable volume of documentation, photographs and other evidence purporting to show that the sponsor and the appellant were married but whether they were married or not is not the key issue that the judge was asked to decide or required to make findings on in relation to this case. The crux of the appeal is a claim that the marriage between the appellant and sponsor occurred prior to the date that the sponsor came to the United Kingdom, i.e. that she was his pre-flight spouse. That is a very important distinction when considering the requirements of paragraph 352A(i) and (ii) of the Immigration Rules as the refugee reunion provisions apply to pre-flight spouses and not spouses whose status has come into existence since the person subsequently recognised as a refugee left their own country as a result of persecution. It is effectively a family reunion provision.

4. Ms Heller relied on two points before us. One was an assertion that in coming to the conclusions that the judge did, the judge has effectively ignored or failed to take into account relevant evidence. The two specific items of evidence that were referred to by Ms Heller are a series of photographs which we have been able to look at and consider in the blue photographic album which was shown to the court and which the sponsor confirmed was handed up at the hearing and reference to entries said to be taken from the sponsor's passport.

5. The judge records the nature of documents submitted with the appeal in paragraphs 6 and 7 of the determination, the nature of the appeal hearing and the evidence called in paragraphs 8 to 14, before setting out findings and conclusions from paragraph 17 onwards.

6. The photographic evidence provided was not ignored by the judge. There is specific reference in the determination to photographs having been provided on the day of the hearing and the judge thereafter states "some photos had dates [on them] and some did not as were taken with two different cameras. Video camera shows date. Videos were on his laptop in court (not called/led in evidence by Mrs Ali for the appellant)".

7. The second document we have been referred to, the photocopy of the sponsor's passport, appears to be in a document faxed on 26 February 2014 and it has not been suggested that this document was not before the court.

8. The judge was fully aware of the claim that was being made in relation to the sponsor's presence in the United Kingdom and in Syria or in the Emirates at the relevant time. We have considered whether the fact that within the copy pages of the sponsors passport there appears to be an immigration entry stamp headed UAE dated 11 November 2011 in any

arguable material way should have impacted upon the judge's conclusions in paragraphs 19 and 20 of the determination.

9. The problem with this evidence is twofold. Firstly, accepting that Ms Heller was not Counsel on the day, we cannot see in the documentation before us or the judge's note at the hearing any specific submission or reference being made to this particular document or more importantly permission being sought to adduce this document in evidence, bearing in mind that the majority of the document is in Arabic, is not translated, and therefore according to the Rules of the First-tier Tribunal not admissible.

10. The importance of that is this. Although there is an entry stamp showing re-entry to the UAE on 11 November 2011, in the absence of proper translation of all the other stamps and visa exit and entry stamps written in Arabic and not clearly written in English, it is not possible and would not have been possible for the judge to clearly establish the pattern of the sponsor's immigration history.

11. We do not find the submission that the judge failed to take into account all the evidence that was put before him to be arguably made out on the basis of the submissions we have received. As Ms Heller accepted, the core question in relation to this matter relates to the weight that the judge gave to the evidence. The evidence in the appellant's favour including the photographs that had been referred to, a marriage statement, a judgment of the First Sharia Court and a document headed Registry for the Syrians residing in Lebanon purporting to record the appellant's place and date of marriage to be in Homs in Syria on 2 November 2011, was noted.

12. In addition to considering that evidence the judge also considered the evidence that had been relied upon by the Secretary of State that is referred to in paragraphs 19 and 20 of the determination in the following terms:

> "19. I have had the benefit of seeing and hearing the sponsor give evidence and be cross-examined in person before me, finding his evidence to contain significant discrepancies and inconsistencies and to be less than truthful (as well as lacking any support from the appellant herself in the form of any witness statement), the timeline clearly speaking for itself in this case and, amongst other things, giving the lie to the appellant's (and sponsor's) claim to have married on 2 November 2011 in Syria at a time when, even on the sponsor's own evidence (see question 40 of his asylum interview), he had already 'returned to the Emirates on 1 November 2011'.
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> 20. The appellant's application (and appeal) is also fatally undermined by, amongst other things: (i) the sponsor's initial claim in his screening interview on 23 October 2012 to be single, as opposed to married and rejecting his alleged 'misinterpretation' claim as disingenuous, self-serving and simply too convenient in the circumstances, especially given the lack of any attempt on his part to explain that whilst he was not married to or in a relationship with anyone in the UK, he was however [allegedly] married to his wife/the appellant overseas; (ii) the sponsor's failure to give the appellant's correct date of birth in

> interview; (iii) the delay of more than one year in the making of the application (19 December 2013) from the date of grant of refugee status to the sponsor (15 November 2012)."

13. We did not trouble Ms Heller with regard to submissions in relation to (ii) and (iii) as they are matters that particularly in regard to (iii) most judges would not have thought needed to be considered in relation to the credibility of a claim but some judges do. This judge did think it was relevant but we do not find that it is the key point.

14. The key point is simply this, that in the Asylum Interview Record in reply to question 40 the sponsor when asked about dates he transferred money gave the following reply:

> "I don't remember exactly but before joining the coordinating members so nothing to do with the organisation. I didn't physically travel with the money on the first occasion but on the second time I physically took 20,000 dirham on 28/10/2011 and returned to the Emirates on 1/11/2011."

15. No evidence was adduced to the judge to show that in making such a statement in a document that the sponsor would have been invited to sign as a statement of truth, that any error was in fact made. When one looks at the rear of the interview record it is clear that a copy of the audio recording was provided and a receipt of that acknowledged by the applicant. It is also clear when one looks at the interview record that the applicant states that he understood all the questions that had been put to him and understood the interpreter. The judge was therefore entitled, in our view, to place weight upon that statement. That statement on the face of it does appear to be material for if the sponsor left Syria on 1 November 2011 his claim to have been in Syria and to have married his wife on the following day, 2 November 2011, cannot be credible.

16. The judge did not, however, only refer to that document. The judge also took into account a second document, namely the replies given by the sponsor in his screening interview. Whilst it is accepted, and there is case law to this effect, that caution should ordinarily be taken with regard to replies in screening interviews, especially where they occur shortly after an individual having travelled for a long time on a long, tortuous or arduous journey is tired and because they are not supposed to contain a full record of the individual's case which appears in the asylum interview, there is an expectation that when people give replies to the questions asked in the screening interview that they will tell the truth.

17. The time of the screening interview was 23 October 2012 at 5.37pm. The statement by the sponsor that this was after a long journey and that he was tired has to be considered by reference to the fact that his flight to the United Kingdom was only from Abu Dhabi and Dubai which, although it may be tiring for some depending on circumstances, does not suggest the type of journey that many who flee their country to come to the United Kingdom are forced to embark upon. The screening document is quite

important. We have Stage Two, Part Six, dealing with family background before us which was clearly the copy provided to the judge as the judge has marked it, noting that it was received on the day of the hearing.

18. The sponsor was asked his last permanent address of his country of origin, which he provided within Damascus in Syria. Question 6.2 states "what is your marital status? to which the sponsor replied "single". It is suggested that there was an error by the interviewing officer in not going on to the second part of question 6.2 which states "if the applicant is not married ask: are you in a relationship with another person in the UK or abroad?" It is suggested in the skeleton argument that had that question been asked the sponsor may well have had the opportunity to give a different answer or to correct what is now claimed to be an inaccurate answer when he stated he was single. We do not know why that question was not asked by the interviewing officer but that does not in itself cast sufficient doubt upon the reply given to the question asked such that the judge was not entitled to place any weight upon the assertion by the sponsor that at that time he was single, i.e. not married.

19. In paragraph 21 the judge goes on to examine aspects of the documentary evidence provided by the appellant in support of her case. It was submitted in the skeleton argument that there was a contradiction or unfairness in some documents provided by the sponsor, namely the passport, being accepted and documents referred to in paragraph 21(i) to (v) relating to the marriage not being accepted when it is stated that they originated from the same source.

20. We accept there is arguable merit in the submission made by Mr Duffy that a passport is an original official document issued through state bodies containing security features which give some weight and assurance to an individual considering whether it is an original document. The papers referred to in paragraph 21 of the determination do not appear to contain similar security features and it is important to consider those documents in the context of the case as a whole. Those documents were submitted to the court in support of the claim that the sponsor and appellant had married on 2 November 2011. The judge, having considered all the evidence, concluded that the discrepancies we have referred to set out in paragraphs 19 and 20 originating from the sponsor himself on an earlier occasion, cast serious doubt upon whether the claim was true.

21. Having decided that the evidence on balance supported a finding that the appellant had not discharged the burden of proof to provide a satisfactory explanation for the anomalies and significant discrepancies and inconsistencies it was arguably open for the judge then, having considered the evidence as a whole, to deal with those documents via the application of **Tanveer Ahmed**, which reflects the weight that he or she would have given to that part of the sponsor's evidence.

22. The Court of Appeal in 2012 gave judgment in the case of **SS (Sri Lanka) [2012] EWCA Civ 155** in which they were considering a challenge to the

weight a former colleague, Upper Tribunal Judge Spencer, gave to a medical report in a Sri Lankan asylum claim. The challenge was that the judge had misapplied or given insufficient weight to that report when assessing whether the appellant in that case had suffered scarring as a result of ill-treatment whilst in Sri Lanka.

23. The Court of Appeal found that provided it has been demonstrated that the judge considered the evidence he or she had been asked to consider with the required degree of anxious scrutiny and provided the judge has given adequate reasons for findings that have been made in the judgment or determination, the weight to be given to the evidence is a matter for the judge.

24. Mr Duffy in his submission specifically referred to the fact that there is no challenge to this determination on the basis of a suggestion of perversity or irrationality or one that enables us to find that the weight given to the evidence the judge was asked to consider admits a finding of an arguable legal error material to the decision to dismiss the appeal.

25. On the basis of the evidence that was before the judge we do not find this was a decision that the judge was not entitled to arrive at, having considered the evidence and weight of the competing cases with the appropriate degree of anxious scrutiny, as a reading of the determination clearly shows the judge did.

26. As we do not find that the appellant has made out that there is any arguable material legal error our decision has to be that the determination shall stand.

Notice of Decision

The appeal is dismissed. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

No anonymity direction is made.

Signed Date: 24 November 2015

Upper Tribunal Judge Hanson