Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03461/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 2 March 2015	**On 5 March 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Marjan Daeisadeghi
[No anonymity direction made]

Claimant

Representation:
For the claimant: Not represented, except by sponsor Mr Abdollah Daeisadeghi
For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Chambers promulgated 28.10.14, allowing the claimant's appeal against the decision of the respondent, dated 21.1.14, to refuse the appellant entry clearance to the United Kingdom for settlement as the spouse of the sponsor pursuant to paragraph 352A of the Immigration Rules. The Judge heard the appeal on 15.10.14.

2. First-tier Tribunal Judge Fisher granted permission to appeal on 5.12.14.

3. Thus the matter came before me on 2.3.15 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Chambers should be set aside.

5. The sponsor has refugee status in the UK. The application made on 10.9.13 was for family reunion of the claimant as a pre-flight family member of a refugee, pursuant to paragraph 352A of the Immigration Rules. This requires the applicant to be married to a person with current refugee granted status in the UK and the marriage must not have taken place after the refugee left the country of his former habitual residence in order to seek asylum.

6. The sponsor was granted leave to remain as a refugee on 23.1.13. It is claimed that he entered into a Sigheh, or temporary marriage, with the claimant on 1.5.10. On 22.8.13 the claimant and the sponsor were married by proxy in Iran, over the telephone. The application was refused because the claimant married the sponsor after he was granted his refugee status.

7. In essence, the grounds of appeal assert that the judge erred in finding that the temporary marriage of the claimant and the sponsor could be regarded as a valid marriage.

8. It is also submitted that as by the time of the second marriage the sponsor was settled and domiciled in the UK, he had no legal capacity to enter into a proxy marriage, an issue not considered by the First-tier Tribunal Judge, except at §16 and §17 when considering whether the second marriage was valid, finding that although the sponsor is living in the UK he was entitled to enter into a proxy marriage and that his residence in the UK did not affect his capacity to enter into a marriage. However, §17 contains an error of law, as contrary to that stated by the judge, neither a British citizen nor a person settled in the UK may enter into a proxy marriage, as proxy marriages are not recognised as a valid form of marriage in the UK.

9. In granting permission to appeal, Judge Fisher found an arguable error of law in the failure of the First-tier Tribunal Judge to make any finding on the sponsor's domicile at the point of the second marriage. However, it was the first, temporary, marriage which the judge found met the requirements of the Rules. As the judge explained at §18, the second marriage does not assist the claimant, as it was entered into after the sponsor left Iran in order to claim asylum.

10. I find that the judge was in error to find the first, temporary marriage, valid for the purpose of 352A. The judge referred to LS (Mut'a or Sighe) Iran [2007] UK AIT 00072, in which the headnote states that: "the Islamic institution of mutʿa or sighē is in its essence neither permanent nor exclusive. It is not marriage within the meaning of the Immigration

Rules, and its existence does not imply a relationship continuing or intended to continue beyond its termination."

11. Judge Chambers correctly pointed out at §19 that the Tribunal did not hold as the headnote suggests, as the Tribunal was not asked to decide that issue. However, it did state as follows:

> 18. "A further question raised on the facts of this case is whether a mut'a is capable of being regarded as a marriage for the purposes of the Immigration Rules. This issue was not conceded by the respondent, who conceded merely that temporary marriage was legal in Iran. As we have said, mut'a is not recognised by the vast majority of Islamic schools of jurisprudence. It has two features that distinguish it particularly from marriage as understood in most cultures, including both those of Western Europe and those of the Sunni division of Islam. One is that it is by nature essentially temporary: it is not of the nature of mut'a to be dissolved by death (although death during the term does dissolve the relationship); the characteristic of mut'a is that it is terminated by mere effluxion of time. Secondly, the relationship between the man and the woman in mut'a is, so far as the man is concerned, not exclusive. His being a party to mut'a has no effect on his ability to contract another similar arrangement with another woman, or to become a party to a nikah or regular marriage. As is well known, the classic Islamic rules restrict a man to four wives. There is no doubt that women with whom he has the contract of mut'a do not count towards the four.
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> 19. Notions of marriage naturally vary between cultures, but we do not think that it would be wrong to regard permanence and exclusivity as essential features of the institution. Both may be subject to variable understanding or even undermining. Rules allowing restricted polygamy, and rules permitting divorce, are found in many societies. But it does not seem to us that an institution which by its nature is neither permanent or exclusive can properly be regarded as marriage. If we had had to decide the issue, therefore, we should have further held that mut'a is not marriage for the purposes of the Immigration Rules."

12. Finally, at §21 the Upper Tribunal very firmly stated: "In any event, however, there was no basis upon which he could have found in the appellant's favour that the second contract was validly entered into by telephone from Turkey, and, further, in our view *mut'a* is not "marriage" for the purpose of the Immigration Rules in any event."

13. In attempting to distinguish LS the First-tier Tribunal Judge referred to the fact that the situation in LS was of two successive temporary marriages, but that distinction does not get round the very clear statement of the Upper Tribunal panel in LS that mut'a is not a marriage for the purpose of the Immigration Rules, as it is neither permanent nor exclusive and thus cannot properly be regarded as a marriage. Further, the Upper Tribunal also pointed out at §12 of that decision that no evidence had been adduced as to the validity of a temporary marriage. I also note that in his interview, the sponsor described the claimant as his fiancée and has also described his status as single in both the screening

and substantive asylum interviews. There was, therefore, no basis in evidence or law for the judge to reach the conclusion that the temporary marriage was valid for the purposes of paragraph 352A.

14. In the circumstances, the appeal to the First-tier Tribunal was doomed to failure; it could not and should not have succeeded. The first marriage was not a marriage for the purpose of the Immigration Rules Whether or not the second marriage was valid in UK law, which is most doubtful, was irrelevant as it was entered into after the sponsor fled Iran.

15. On the basis that the claimant and the sponsor are not married and not in a relationship akin to marriage there is no family life between them capable of engaging article 8 either under the Immigration Rules or outside the Rules on the basis of article 8 ECHR. The claimant was given two opportunities to apply under the correct immigration category, but declined to do so. There is a route for entry under the Immigration Rules, which the claimant has not pursued.

16. The sponsor told me that it is sad for him not to be able to see his 'wife.' He also pointed out that they lived together for a period of time in the same household as his parents. He has only been able to see the claimant by visiting her in Turkey. He insisted that both marriages were valid.

17. In the circumstances of this case, even if their circumstances engaged article 8, it would be difficult to conclude that the decision was disproportionate. They are free to continue such relationship as they have with each other in the circumstances in which the relationship was founded by the proxy marriage, visit each other in third countries, or to make an application that meets the requirements of the Immigration Rules. There is therefore no prospect whatsoever that the appeal could be allowed on the basis of human rights.

Conclusion & Decision:

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it on immigration and human rights grounds.

Signed: Date: 2 March 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal of the claimant has been dismissed and thus there can be no fee award.

Signed: Date: 2 March 2015

Deputy Upper Tribunal Judge Pickup