



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

Appeal Number: OA/03620/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 21st May 2015**

**Determination Promulgated
On: 28th May 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

Between

**Entry Clearance Officer, Kingston
(no anonymity direction made)**

Appellant

and

Mr Karlos Von David Simon

Respondent

Representation:

For the Appellant: Mr Duffy, Senior Home Office Presenting Officer

For the Respondent: Mrs Simon, Sponsor

DETERMINATION AND REASONS

1. The Respondent is a national of Grenada date of birth 24th January 1986. In a determination dated the 26th January 2015 the First-tier Tribunal (Judge Somal) allowed his appeal against a decision to refuse to grant him entry clearance as a spouse. The Entry Clearance Officer now has permission to appeal against the First-tier Tribunal's decision.

Background and Matters in Issue

2. The refusal notice is dated 3rd February 2014. The Entry Clearance Officer had found there to be discrepancies in the information that the Respondent had supplied on different dates. On his application form it was stated that he had only one child; on a previous occasion he had told an Immigration Officer at Gatwick Airport that he had four children. In light of this the Entry Clearance Officer was satisfied that the Respondent had supplied false information and the application was therefore refused with reference to paragraph S-EC.2.2(a) of Appendix FM. The refusal notice further notes some discrepancies in respect of when the Respondent's relationship with his British sponsor was said to have started. The refusal notice addresses various pieces of evidence that supported the application, and gives reasons why little weight is to be attached to each. The notice concludes "given the evidence described and the fact that you have made false declarations regarding your children in Grenada, as well as other discrepancies and omissions in your application, I am not satisfied that your relationship with your sponsor is genuine and subsisting or that you intend to live together permanently in the UK".
3. When the matter came before the First-tier Tribunal the Entry Clearance Officer was not represented. The determination is silent about why that might have been; before us Mr Duffy suggested that it was probably staff shortage. Mrs Simon attended and was called to give evidence by her husband's representative. Having heard that evidence the Tribunal records that it found Mrs Simon to be "an honest and credible witness". The Tribunal correctly identified that where allegations of fraud or dishonesty are made, it is for the party making the allegation to prove them: the burden of proof therefore lay on the Entry Clearance Officer. Having had regard to the credible live evidence of Mrs Simon as well as the documentary evidence before it the Tribunal rejected the assertion that either Respondent or Sponsor had been complicit in any attempt to deceive. They had produced credible evidence that the electronic application form had been incorrectly completed by a legal representative. This included the pro-forma that they had completed and handed to that representative, which clearly gave the names and dates of birth of each of the Respondent's four children. The Tribunal accepted, in effect, that there had been an error in that information being transcribed onto the electronic form. As to the relationship the Tribunal had regard to the oral and written evidence, the travel records showing a number of visits, photographs, and evidence of contact through telephone, Skype and social media. The Judge was satisfied on a balance of probabilities that this is a genuine and subsisting marriage. The appeal was therefore allowed under the Immigration Rules and on human rights grounds.

4. The Entry Clearance Officer now appeals on the following grounds:
 - i) The Entry Clearance Officer did not have to prove that there had been an attempt to deceive. It was enough that the application contained false information, because paragraph E-EC.2.2 specifies that the omission can be “with or without the applicant’s knowledge”.
 - ii) The Tribunal erred in failing to address the specific reasons given by the Entry Clearance Officer as to why the relationship was not accepted.
5. On the 4th March 2015 First-tier Tribunal Judge Levin granted permission in respect of ground ii); he noted that where the Entry Clearance Officer was not represented the Tribunal should have applied the *Surendran*¹ guidelines and taken particular care to deal with all of the points raised in the refusal notice.
6. Permission was refused in respect of Ground i) with reference to the decision in *Shen* (Paper Appeals; proving dishonesty) [2014] UKUT 00236 (IAC). Judge Levin found that the reasoning in the determination was adequate and that there was no arguable merit in the grounds. The Judge had been entitled, on the evidence before her, to make the findings that she did. Before us Mr Duffy did not renew the application for permission on that ground. Instead he focused his concise submissions on ground (ii), referring us to the detailed reasons given in the refusal notice why the Entry Clearance Officer had not believed this to be a real marriage. In the circumstances where the Entry Clearance Officer had not been present at the appeal it was incumbent on the Tribunal to examine that reasoning with care.

No Error of Law

7. Mr Duffy is correct to say that the refusal notice gave a number of reasons why the Entry Clearance Officer was dissatisfied with the evidence that supported the application. Some adverse inference was drawn from the fact that neither he or his wife mentioned his children in their written statements; the fact that her sister Dana Gay had thought it pertinent to state that she did not believe this to be a “marriage of convenience” was thought suspicious; the evidence of contact, photographs and cards from friends were found to be insufficient to discharge the burden of proof.
8. We are satisfied that the Tribunal did not err in failing to make specific findings on each of these points. It is clear from paragraph 2 and 12 of the determination that Judge Somal had

¹ *Surendran* v SSHD (1997) approved by the Upper Tribunal in *MNM v SSHD* [2000] INLR 576.

been well aware of the matters that were in issue before her, and that she had read the refusal notice. In the second part of paragraph 12 she specifically refers to the evidence of intervening devotion and finds - contrary to the view expressed in the refusal notice - it to be "strong evidence" that this is a genuine relationship and that the parties married following a romance. She had the opportunity to hear oral evidence from Mrs Simon, whom she found to be honest and credible. Crucially, she had accepted that there had been no attempt at deception. It was clear from the refusal notice that the Entry Clearance Officer's decision on whether this was a genuine marriage was very much influenced by his finding that the application had contained false statements. If there had been deception this would of course have been an inference that was open for him to draw. The Tribunal, on the other hand, viewed the remaining evidence through a prism unclouded by a finding of deception, and in those circumstances Judge Somal was entitled to find that the evidence before her was sufficient to discharge the burden of proof. We are satisfied that the First-tier Tribunal understood the reasons for refusal and that she has given clear, intelligible reasons why she disagreed.

Decisions

9. The determination contains no error of law and it is upheld.
10. We were not asked to make a direction as to anonymity and on the facts we see no reason why one should be made.

Deputy Upper Tribunal Judge Bruce
25th May 2015