



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/13143/2014

THE IMMIGRATION ACTS

listed at The Royal Courts of Justice,
Belfast
On 21 October 2015

Decision & Reasons Promulgated
On 30 October 2015

Before

The President, The Hon. Mr Justice McCloskey

Between

ENTRY CLEARANCE OFFICER OF PAM

Appellant

and

REYHANAT SULEYMANOVE

Respondent

Representation:

Appellant: Mr P Duffy, Senior Office presenting Officer
Respondent: Mr K Nerry of John P Hagan Solicitors.

DECISION AND REASONS

1. By a decision dated 06 October 2014, the Entry Clearance Officer of Pam, Azerbaijan (hereinafter the "ECO") refused the Respondent's application for clearance to enter the United Kingdom as a fiancée under Appendix FM of the Immigration Rules. The Appellant is a national of Azerbaijan, a lady aged 39 years. At the time of the application, the Appellant's sponsor, her fiancé, was still married. The plan was that his then extant divorce proceedings would be completed in sufficient time to enable them to be married following the envisaged grant of entry clearance. However, for

reasons which are acceptable and understandable, the divorce proceedings did not progress at the pace contemplated. While non-compliance with the funding requirement was a further reason for refusal initially, this was later abandoned by the Entry Clearance Manager on review. He identified the sole issue of concern in the following terms:

“With regard to the relationship requirement, the sponsor had previously been married and was not divorced from his former spouse ...

I acknowledge that the Appellant submitted a divorce petition, raised by the sponsor’s spouse against him, with her application ... The relationship had permanently broken down and I am prepared to concede this element of the refusal notice ...

[But] I am satisfied that the ECO was correct in his assessment that the couple would not be able to undergo a marriage in the UK within the validity of her visa.”

2. The First-tier Tribunal (the “FtT”) allowed the Appellant’s appeal, in a paper exercise. The Judge noted the twofold requirement of the Rules that entry must be sought to enable the marriage to take place and any previous relationship of the applicant or their partner must have broken down permanently. I emphasise the words in question because, in the original decision, the ECO misrepresented the terms of the rule and, in consequence, misdirected himself in law and applied a non-existent requirement to the application. The essence of his error was to substitute sponsor for applicant or their partner. His decision was unsustainable in law on this ground alone. In any event, the FtT was satisfied that –

“... there was very clear evidence that the relationship between the sponsor and his former wife had permanently broken down ... [and] ... that a speedy resolution of the divorce was anticipated ...

In actual fact, the decree absolute was pronounced on 09 March 2015, so they would have been able to take up the provisional booking at the Registry Office on 23 March 2015 if the application had been allowed.”

The appeal was allowed in the following terms:

“I find that the Appellant has met the requirements of E-ECP.1.1(d) and E-ECP.2.8. The decision is not in accordance with the law and the Immigration Rules.”

3. Even if the relevant provisions of the Immigration Rules can be construed so as to apply to the Applicant’s sponsor, to be contrasted with the Applicant’s former partner, there is no flaw in the approach of the FtT. However, I conclude that the grant of permission to appeal is flawed, being based on a non-existent requirement to provide certain types of “evidence” required by the Rules. While paragraphs 23 – 26 of Appendix FM/SE require a specific kind of evidence to be provided where it is claimed that a person is divorced or a civil partnership has been dissolved, this requirement has no application in the present case since no such claim was made. The grant of permission to appeal was, therefore, misconceived.

DECISION

4. The decision of the FtT contains no error of law and is unassailable in consequence. I affirm it and dismiss the appeal.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 21 October 2015