



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

Appeal Number: OA/21968/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2015**

**Decision & Reasons
Promulgated
On 11 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS HANIA ZARQUI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Vidyadharan, Home Office Presenting Officer
For the Respondent: Mr P Collins, Counsel instructed by Ashtons Solicitors

DECISION AND REASONS

1. The Appellant is a citizen of Morocco born on 19 April 1972. She has no immigration history of any consequence that either party has referred to during the course of the current proceedings. She applied for entry

clearance for the purpose of settlement as the partner of the sponsor, a British citizen, which application was made in August 2013.

2. That application was refused on 13 November 2013, the Entry Clearance Officer taking essentially three points against the Appellant although they were really all part of one larger point. Put simply he did not believe that the Appellant intended to come to the UK to marry the sponsor and to live with him as his spouse in a genuinely subsisting marriage. So the three pathways for that refusal were Appendix FM to the Immigration Rules, paragraph E-ECP.1.1(d), 2.6, 2.8, and 2.10.
3. The Appellant appealed that refusal and her appeal came before Judge Walters at Taylor House on 22 October 2014. By a decision promulgated on 18 November 2014 the appeal was allowed under the Immigration Rules.
4. The Respondent then applied to the First-tier Tribunal for permission to appeal against that decision, raising by way of challenge the complaint that the judge's decision was not properly reasoned. Issues of credibility were said to have been taken by the Entry Clearance Officer in his refusal which the judge had not adequately dealt with. Permission was granted to the Appellant by Judge Lever on all grounds on 21 January 2015.
5. There is a Rule 24 response from the Appellant to that grant of permission dated 5 February of this year and so the matter comes before me.
6. At the heart of the Entry Clearance Officer's decision was his concern that the evidence of ongoing contact between the Appellant and the sponsor was not sufficient to satisfy him that the couple were in a genuine relationship. Part of that evidence can be found at Appendix FF to the Respondent's bundle. It is a lengthy document that reads line by line as a transcript of a form of conversation. As a standalone document it does not explain who the parties to that conversation were, or the dates and times during which its constituent parts took place.
7. At the appeal hearing a document was produced which used the same text for the conversation but added an additional four columns of text, which purported to identify who the writer was at any given time, and who the recipient or reader would be. Each line of text has against it both a date and a time in the 24 hour clock. So from this latter document, although it could not be seen from the document originally produced, the reader can see that this is a transcript of a conversation which started on 12 January 2012 and ran on over successive weeks so that the last entry is dated 18 October 2012. The Rule 24 response asserts that this document was not challenged at the hearing. However the sponsor was asked questions about both of these two documents in the course of cross-examination and was asked to explain why the text appeared in a different form in the document produced for the appeal hearing as opposed to the document produced to the Entry Clearance Officer in support of the Notice of Appeal. She offered an explanation for that difference, referring to the difficulties

of obtaining any written record or printout of the electronic exchanges that take place in an internet forum, whether that be a chat room or some other site that lacks the formality of an exchange by way of email letters. It seems to me quite clear from the decision when it is read as a whole that although the judge did not set out all of this evidence and his assessment of it in the detail that one might ordinarily expect, and indeed hope for, he did accept the explanation that he was being offered for the difference between the two documents, and that he did accept the sponsor's evidence and the Appellant's written evidence to the effect that this was a genuine conversation and not something simply created artificially after the event of the decision in an attempt to bolster a flawed application.

8. The second point that appears to have exercised the Entry Clearance Officer was the lack of a demonstrable intention to marry. Leaving aside the references to the nature of the relationship that might be found in the lengthy conversation taking place during 2012 to which I have referred above, the Appellant had obtained the document dated 14 December 2012 following an approach that had been made to the Superintendent Registrar on 22 November 2012 to clarify whether the parties would be free to marry. This is the document headed Superintendent Registrar's Certificate of No Impediment to Marriage, Pursuant to the Marriage with Foreigners Act 1906. The author being the Superintendent Registrar for the District of Bradford and Keighley. Although the Entry Clearance Officer says in terms in his decision that he had no evidence before him to demonstrate any intention to marry, the documents that were before the judge, and are before me now, demonstrate that his assertion to that effect was wrong. The certificate was referred to in a solicitors' letter dated 8 November 2012 at Appendix L written on behalf of the Appellant to the Entry Clearance Officer in Rabat in support of the application for entry clearance. This was one of those letters that a number of solicitors practising in this field consider is a sensible and expedient supplement to the information required of their clients in the computerised Visa Application Form. It is used generally as a vehicle for advancing perhaps a little more detail or explanation of what has taken place as the background to the application. Here the author plainly used his letter as a vehicle to introduce, and to supply, a series of documents relied upon in support of the application for entry clearance, and not just to advance an argument. So at item 5 of the list of enclosures to this letter we find the Certificate of No Impediment. That can only be a reference to the certificate issued by the Registrar for the District of Bradford and Keighley.
9. Now the Respondent before me fairly takes the point; how could both the Entry Clearance Officer and the Entry Clearance Manager on review in the face of the Notice of Appeal both have overlooked the existence of this document so that both were able to conclude that there was before them no independent evidence to corroborate the claimed intention to marry? I do not think it is for me to advance an answer to that. It is enough to look at the decision and the judge's acceptance of the evidence that he was

being given on behalf of the Appellant. That view can only be bolstered in my judgment by the unchallenged terms of the Rule 24 response.

10. Accordingly, whilst this was a decision that is sparse in its detail, and does not provide the reader with the detailed analysis of the evidence that the majority of judges would undertake with an appeal of this sort, I am satisfied that the decision is one that falls short of the dividing line between a challenge that is no more than a disagreement with the judge's conclusions and a challenge that overcomes the threshold of demonstrating that the judge's reasoning and analysis of the evidence were so inadequate as to amount to a fatal error of law. There is no suggestion that the judge overlooked any evidence that was material to the appeal or that he took into account evidence that was irrelevant and immaterial to the appeal. Both parties now accept before me that these were findings of fact that he was entitled to come to on the evidence, provided he had analysed that evidence adequately and given adequate reasons for his findings. So in those circumstances this challenge must fail, amounting as it does to no more than a disagreement with the wrap-up finding to be found in paragraphs 28 and 29 of the decision in the following terms:

"28. I found the sponsor and all his witnesses to be honest and reliable and accepted their evidence.

29. I found that the relationship between the sponsor and the Appellant is genuine and that they intend to marry and to live permanently together in the UK."

11. For the reasons set out above in my judgment whilst the judge's approach lacked the detailed analysis of the evidence that the parties were entitled to, those findings were upon a proper analysis sufficient to dispose of the appeal and to provide an explanation for the decision. That being the case, there is no error of law demonstrated in his approach to the evidence requiring me to set aside his decision and to remake it. The decision on the appeal is therefore confirmed.

Notice of decision

The appeal is dismissed

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J M Holmes