



IAC-FH-CK-V1

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

Appeal Number: OA/06405/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd December 2015**

**Decision & Reasons Promulgated
On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MISS JERLANER WATSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS
EX TEMPORE JUDGMENT**

1. The Appellant appeals a decision of the First-tier Tribunal made following a hearing of 22nd May 2015 in which the judge dismissed her appeal against the refusal of entry clearance as a fiancée. The judge found that the Appellant had not produced her Sponsor's final divorce document as she had indicated as being attached to her Notice of Appeal and that accordingly the Entry Clearance Officer's concerns that no

decree absolute had been issued so that the intention of the Sponsor and the ability of the Sponsor to enter into a marriage with the Appellant was made out.

2. I note from the file that in fact the decree absolute was attached to the Notice of Appeal as served upon the Entry Clearance Officer and Tribunal. The appeal grounds are dated 20th May 2014. In those circumstances I am satisfied that the Tribunal Judge's decision is vitiated by error in that a significant piece of evidence was overlooked.
3. I am satisfied that the error is material in the sense that I cannot be sure that had the judge seen that document that the decision would have been the same and accordingly I set that decision aside. The parties having been notified that in the event that I should do so today I would be remaking the decision, I find it appropriate to continue to proceed to remake the decision.
4. The Appellant is out of country and accordingly is not before me, and in those circumstances I find it appropriate to exercise my discretion under Rule 38 of the Upper Tribunal Procedure Rules and proceed to determine the appeal in the absence of the Appellant. The Appellant had requested in any event a paper hearing and of course cannot be before me and has not elected to instruct a representative to appear.
5. In determining the substance of the appeal I find that the Entry Clearance Officer has failed to provide the evidence upon which the decision is predicated. There is no Respondent's bundle. I note that the substantive issue in terms of the ability of the parties to marry was resolved by the production of the decree absolute, and in that regard I am satisfied that there is no countervailing evidence going against the Appellant's assertion of a genuine intention to marry.
6. Looking at the evidence that was available to the Entry Clearance Officer as is reflected in the decision I note that the Respondent does not dispute that the Appellant and her Sponsor have met, and indeed that seems to have been corroborated by the conversation between the Respondent ECO and the Sponsor.
7. Further the position was evidenced by way of documentary support for the application both in terms of the Sponsor's financial position as well as statements going to the subsistence of the relationship not only made by the Sponsor but also made by third party witnesses. None of that evidence is significantly contested in the Entry Clearance Officer's reasoning.
8. The Entry Clearance Officer does complain that the photographic evidence which has been submitted of the couple together does not carry with it any determinative evidence of the date upon which they were taken. I do not see how that takes the matter any further as it is self-evident that the evidence is of the couple being in the same place at the same time and had the Entry Clearance Officer had reason to doubt the fact of the relationship he or she had the opportunity of raising that directly with the Sponsor and plainly the inference must be that the Sponsor has continued to support the application throughout.

9. Standing back and looking at the evidence in the round I am satisfied that the Appellant has established to the standard of the balance of probabilities that the relationship with the Sponsor was genuine and subsisting as at the date of the refusal decision on 8th April 2014 and that the couple intended to live together permanently in the United Kingdom in the context of a marriage taking place following the permanent breakdown of the previous relationship of the Sponsor to the point that all the requirements set out at E-ECP.2.6, 2.8, 2.9 and 2.10 were met.
10. No other reason for refusal remaining, it follows that I allow the Appellant's appeal.

Notice of Decision

The decision of the First-tier tribunal reveals an error of law. I set it aside and remake the decision by allowing the appeal on immigration rules grounds.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge