Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/12459/2014
OA/12462/2014
OA/12463/2014
OA/12466/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 8 March 2016	**On 4 May 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

ENTRY CLEARANCE OFFICER - AMMAN

Appellant

and

DA AND OTHERS

Respondents

Representation:

For the Appellant: Mr John Kingham, Senior Home Office Presenting Officer
For the Respondent: Ms Mariam Cleghorn, Counsel, instructed by Halliday Reeves Law

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge) allowing the respondents' appeals against a decision taken on 21 July 2014 to refuse entry to the UK under paragraph 352A and 352D of the Immigration Rules.

Introduction

3. DA is a citizen of Syria born in 1982 and the remaining respondents are her minor children. The sponsor is also a citizen of Syria who was granted refugee status in the UK on 23 April 2014. The sponsor married DA in Syria in 2002. It was an Islamic marriage which was subsequently registered at the Registry Office. In 2006 the sponsor travelled to the UK to study English on a six month visa which was subsequently extended. The sponsor kept in regular contact with DA and the children, sent them money and visited them. The sponsor then met and married a Polish woman in an Islamic ceremony in 2008. The sponsor's Polish wife wished a civil ceremony in the UK and so the sponsor divorced DA in Syria and married his Polish wife in a civil ceremony in the UK on 18 November 2009. The marriage between the sponsor and the Polish wife ended in divorce in the UK in November 2013 and the sponsor claimed asylum. He continues to support the respondents and named them in his asylum interview on 17 April 2014.

4. The Entry Clearance Officer accepted the respondents' identity and nationality but concluded that there was no satisfactory evidence of a current valid and subsisting marriage. DA and the sponsor had lived apart for a lengthy period whilst the sponsor established a new family life in the UK. It was not accepted that there was a subsisting relationship or that DA intended to live with the sponsor in the UK. The dependent children were not part of the family unit of the sponsor when he claimed asylum. The children had been living with their mother since he left for the UK in 2009 and there was no evidence that he had any responsibility for the welfare of the children. The sponsor could join DA in Lebanon or another safe country nearby.

The Appeal

5. The respondents appealed to the First-tier Tribunal and the sponsor attended an oral hearing at North Shields on 15 July 2015. The respondents were represented by Ms Cleghorn. The First-tier Tribunal heard evidence from a number of witnesses including the sponsor, three of his brothers, his Imam from Middlesbrough and his solicitor from Syria. The judge found that the relationship between DA and the sponsor was

subsisting throughout, their religious marriage was the "real marriage" and that no document was required to show that it subsisted. The UK authorities had accepted the civil divorce in Syria as sufficient evidence that the first marriage was over so at to permit the sponsor to remarry. However, in Syria and the Middle East it appeared to be culturally accepted that the religious marriage was the important marriage.

6. Civil registration of the marriage in Syria was unnecessary and was only to facilitate the education and childcare for the children of the marriage. The civil ceremony was simply paying lip service to the religious ceremony which was the important means of changing marital status. The civil ceremony was mere paperwork, simply a registration of the religious event which had already taken place. It was not surprising that it was relatively easy to obtain a civil divorce to satisfy the authorities in the UK but which in fact made no difference to the marital status of the parties as they remained married. There was evidence that the sponsor was entitled to have more than one parallel marriage as he was a Muslim. The relationship with DA was subsisting throughout the sponsor's second marriage and continued to do so after his divorce from the Polish wife. The respondents and the sponsor could not live as a family as the sponsor was studying and then the situation in Syria deteriorated and he could not return there. It became so bad that DA and the children, having moved to Lebanon to make the current applications could not return to Syria. The sponsor had refugee status and was entitled to family reunion.

The Appeal to the Upper Tribunal

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that DA and the sponsor were married under paragraph 352A of the Rules or that the marriage was subsisting at any time after the divorce and second marriage in September/October 2009. The evidence clearly indicated that the matrimonial relationship had ceased as had the formality of marriage. From GA ("Subsisting" marriage) Ghana [2006] UKAIT 00046, if there is no legally valid marriage at the time of the decision then the application never gets off the ground. There had to be a valid marriage before consideration of its subsisting nature could be assessed. The judge also failed to engage with the decision that the children were not part of the sponsor's family unit when he left Syria in September 2009 to come to the UK to marry the Polish wife, having already applied for divorce to end his marriage in Syria.

8. Permission to appeal was granted by First-tier Tribunal Judge Nightingale on 16 December 2015 on the basis that it was arguable that the judge had erred by failing to consider whether the minor respondents were part of the family unit when the sponsor left Syria to remarry and in finding that DA was still in a legally valid marriage to the sponsor when he had in fact entered into a legal marriage to his Polish wife in the UK.

9. Thus, the appeal came before me

Discussion

10. Mr Kingham submitted that this was effectively a perversity challenge against paragraphs 34-35 of the decision. It was irrational to find that the marriage to the Polish wife was lawful but also that when the marriage was contracted the previous marriage was also valid. If it was the sponsor's position that the Syrian civil divorce document did not reflect lawful reality then he had entered into a bigamous marriage in the UK. In fact, it was clear that the Syrian marriage to DA had been dissolved. From paragraph 23 of the decision, the Syrian civil divorce document was not produced to the Tribunal. Paragraph 31 of the decision refers to remittances to the children but that does not mean that the marriage is subsisting. Were all of the respondents part of the family unit prior to the sponsor travelling to the UK? Paragraph 36 of the decision equates refugee status with family reunion. The sponsor claimed to be single in 2006. The decision should be set aside and remade.

11. Ms Cleghorn submitted that the decision was well reasoned. The evidential and legal basis was discussed in some detail. Paragraph 31 of the decision reflects the evidence. The real problem is that there is no such thing as a civil marriage in Syria; just civil registration of a religious marriage. The purpose of the civil marriage is to ensure that children are recognised. That is nothing to do with validity of the religious marriage. UK law recognises polygamy in other cultures. If the parties are not married what then for the family? How can the parties get married when they are already married? The purpose of the civil divorce is to identify the dowry. All turns on the religious aspect. There are Christian marriages and Muslim marriages in Syria but no civil marriages – just civil registration. The family are in Turkey and will be in limbo if the marriage is not recognised. The process now should be as if the Polish wife had never come into the picture. The parties are clearly still married. The IDIs do refer to polygamous marriages but are not mentioned in the decision. DA is in Turkey and is pregnant. The sponsor struggles to send remittances to Turkey and further delay would not be appropriate.

12. Mr Kingham submitted in reply that if the Syrian marriage is still recognised then the sponsor is a bigamist. The civil divorce document was produced to avoid charges of bigamy. The issue of future remarriage is not for further consideration. This was an entry clearance appeal and the issue is the circumstances in existence as at the date of decision. The problem is that the sponsor contracted a lawful marriage in the UK.

13. I am satisfied that the first substantial issue in this appeal is whether the Syrian civil divorce was effective to end the marriage between DA and the sponsor or whether some form of Islamic divorce was also necessary. The marriage to the Polish wife is not directly relevant to that issue nor is the possibility of the sponsor being criminally liable under UK bigamy laws. The issue under paragraph 352A of the Immigration Rules is whether DA was, as at the date of decision, married to the sponsor and the marriage did not take place after the sponsor left Syria in order to seek asylum. The

respondent does not suggest that the parties were never married or that there was a marriage after the sponsor left Syria. The key to this issue is therefore the effect of the Syrian civil divorce.

14. The judge did not have the benefit of sight of the divorce certificate from Syria and described the failure to produce that document as an "incomprehensible omission" at paragraph 23 of the decision. Nonetheless, the judge found at paragraph 35 of the decision that the civil registration was mere paperwork, simply a registration of the religious event that had already taken place. That being the case, it was relatively easy to obtain a Syrian civil divorce in order to satisfy the authorities in the UK but that civil divorce made no difference to the marital status of the parties as they remain married. That finding by the judge was effectively a finding of fact about Syrian law. The judge did not make that decision in a vacuum because there was substantial evidence regarding the issue before the First-tier Tribunal; particularly form the Syrian lawyer who gave evidence. The judge could have drawn an adverse inference from the absence of the divorce certificate but chose not to do so.

15. I am satisfied that if DA and the sponsor were married at the relevant time then the judge was entitled to find that the marriage was subsisting. There was evidence of financial support, there are three children from the marriage and there was evidence of letters and photographs from the children to the sponsor. The judge was also entitled to give weight to the witness evidence and there are no adverse credibility findings against any of the witnesses. The findings at paragraphs 31-32 of the decision are soundly based upon the evidence.

16. In relation to whether the parties were married, Mr Kingham accurately submitted that this is a perversity challenge by the Entry Clearance Officer. There is no reasons challenge. Perversity represents a very high hurdle, as set out in paragraph 11 of R (Iran) and others v SSHD [2005] EWCA Civ 982. The word means what it says and it is a demanding concept. Perversity includes a finding of fact that was wholly unsupported by the evidence as well as decisions that are irrational or unreasonable in the *Wednesbury* sense. The judge found at paragraph 21 of the decision that the religious law in Syria relating to personal status did not intermingle with civil law relating to personal status. Accordingly, there was an anomalous situation, at least from the eyes of family law in the UK; that two parallel systems are in operation in predominantly Muslim countries. That finding of fact was central to the judge's decision regarding the impact of the Syrian civil divorce.

17. One significant difficulty for the Entry Clearance Officer in this appeal is that there has been no attempt to demonstrate that the findings of fact in relation to the Syrian civil divorce were wholly unsupported by the evidence. The grounds of appeal simply assert that the fact of the divorce and the second marriage indicates that the matrimonial relationship and the formality of the marriage had ceased to continue at the relevant time. I find that assertion goes nowhere near to establishing that the findings in

relation to the Syrian civil divorce were perverse. Establishing perversity would require a detailed analysis of the evidence before the judge and submissions as to why the decision was wholly unsupported by the evidence. That has simply not happened and this appeal does not succeed on perversity grounds.

18. I have considered section 40 of the Family Law Act 2006 which does not feature in the decision of the First-tier Tribunal and was not cited to me by the parties. However, it is the key provision in UK legislation relating to the recognition of overseas divorces. Section 40(1) states that the validity of an overseas divorce obtained by means of proceedings shall be recognised if the divorce is effective under the laws of the country in which it was obtained. That does not determine the issue in this appeal because the judge still had to decide whether the Syrian civil divorce was effective to end the religious marriage between DA and the sponsor. I am satisfied that it was open to the judge on the available evidence to find that it was not so effective and the parties therefore remained in an Islamic marriage throughout.

19. The remaining issue is the absence of any finding that the child respondents were part of the sponsor's family. The requirement under paragraph 352D(iv) of the Rules is that the child respondents were part of the family unit of the sponsor at the time when the sponsor left Syria in order to seek asylum. I am satisfied that the judge found in effect that the children were part of the family unit of the sponsor throughout – the marriage never ended and the sponsor has always been financially responsible for DA and the children. The child respondents have clearly never been part of any other family unit. This ground of appeal therefore wholly lacks merit and cannot succeed.

Decision

20. Consequently, I dismiss the appeal of the Entry Clearance Officer.

Signed  Date 29 April 2016

Judge Archer
Deputy Judge of the Upper Tribunal