



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12912/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 5 April 2016

Decision & Reasons Promulgated  
On 12 May 2016

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**SABRIN AHMED**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sinker counsel instructed by Andrew Jackson & Co Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Heynes promulgated on 7 October 2015 which allowed the Appellant's appeal against the decision of the Respondent to refuse the Appellants application for entry clearance as a spouse under Appendix FM.

### Background

3. The Appellant was born on [18 September 1989] and is a national of Yemen.
4. On 3 June 2014 the Appellant applied for entry clearance as the spouse of Wahib Ahmed ('the Sponsor').
5. On 12 August 2014 the Secretary of State refused the Appellant's application on the basis that it was not accepted that the marriage was genuine and subsisting or that they had the intention to live together permanently.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Heynes ("the Judge") allowed the appeal against the Respondent's decision.
7. The Judge's findings as part of the two page decision consisted of two very short paragraphs which stated that the marriage was a genuine relationship.
8. Grounds of appeal were lodged arguing that the Judge had given no reasons for his decision that the marriage was genuine and made no finding as to whether the parties intended to live together permanently.
9. On 5 February 2015 First-tier Tribunal Judge Andrew gave permission to appeal.
10. At the hearing I heard submissions from Mr Harrison on behalf of the Respondent that :
  - (a) The Judge failed to give any reasons for his decision so it was not possible for the losing party to know why it had lost.
11. On behalf of the Appellant Mr Sinker conceded
  - (a) That the decision was very short and accepted that there was no reference to an intention to live together permanently but that both refusal issues stood or fell together.

## **The Law**

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.
14. I also remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

## **Finding on Material Error**

15. Having heard those submissions, I reached the conclusion that the Tribunal made material errors of law.
16. I am satisfied that the Judge did not give inadequate reasons for his decision he simply gave no reasons. Even 'reading the decision as a whole' does not reveal why he reached the conclusion that he did particularly given that he noted a number of deficiencies in the documentary evidence provided at paragraphs 10-13, while he heard evidence from the sponsor he reached no conclusions about the sponsor's credibility and also referred to Mr Sinkers skeleton argument but did not identify which parts of it persuaded him that the appeal should succeed.

17. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety to be redetermined afresh.

### Remaking the Decision

18. The burden of proof in this case is upon the Appellant and the standard of proof is upon the balance of probability.

19. I have determined this matter based upon facts that were appertaining at the time the decision of the Entry Clearance Officer being constrained by Section 85(5) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) I am entitled to take into account evidence of matters occurring after the date of the decision providing that they relate to and inform an understanding of facts in existence at the time of the decision pursuant to DR (Morocco) [2005] UKIAT 00038.

20. The Appellant's appeal is pursuant to Section 82 of the 2002 Act.

21. The Appellant's Sponsor gave evidence before me at the hearing. The Sponsor's evidence may be summarised: -

22. He adopted the contents of his witness statement. He confirmed that since the date of the application, on 2 February 2016, he had purchased a house for him and his wife so that they could start a family.

23. He confirmed that they maintained contact through Viber and WhatsApp.

24. He stated that he sent money to his wife every month from his account at the NatWest and he had provided the Respondent with copies of his bank statements.

25. He confirmed in cross examination that so far pursuing this application had cost him £6000 in fees and solicitors costs. He was very anxious about his wife living in a war zone.

26. He confirmed that he was a mechanic working for Liverpool Community Transport where he had started as an apprentice but was now a manager.

27. His wife was his cousin and they had met before they married when she came on a family visit.

28. He acknowledged that they had a limited number of photographs, just of their wedding, but this was for religious reasons.

29. He stated that the last time he had contact with his wife was the morning of the hearing when they texted each other. They spoke every day on the phone of the signal allowed.

### **Final Submissions**

30. On behalf of the Respondent Mr Harrison relied on the refusal letter and the ECM review.

31. Mr Sinker on behalf of the Appellant relied on his skeleton argument. He referred to the fact that in law they were clearly married as there was no challenge to the marriage certificate. There were a number of stamps in the Sponsors passport showing that he had visited with the Appellant since their marriage. There was persuasive evidence of contact. He suggested that there had been a significant amount of money spent if this was simply a 'sham' marriage. He suggested that the Sponsor came across as credible and genuinely concerned about the safety of his wife. His purchase of a house was part of the continuing process of their marital relationship. The marriage was genuine and they intended to live together.

### **Findings**

32. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole.

33. In relation to the determining whether a relationship is subsisting and the parties intend to live together permanently I remind myself that in Goudey (subsisting marriage – evidence) Sudan [2012] UKUT 00041(IAC) the Tribunal held that GA ("Subsisting" marriage) Ghana \* [2006] UKAIT 00046 means that the matrimonial relationship must continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted; Evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other; Where there are no countervailing

factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.

34. The Appellant made an application under Appendix FM for leave to enter the UK as the spouse of Wahib Ahmed who she married on 5 August 2009. In her visa application she explained the background to their marriage, that they were cousins who had known each other as children until the Sponsor came to the UK in 2001. He then returned to Yemen for a holiday in 2005 where they met again and although attracted to each other there could be no relationship until they were engaged and married for religious reasons. They therefore became engaged on 30 August 2008 and married on 5 August 2009. There is therefore clear undisputed evidence that the Appellant and the Sponsor are legally married. The Sponsor remained with the Appellant for a honeymoon until 5 August 2009.
35. The Sponsor has since returned to Yemen on 14 November 2010 to see his wife, again on 17 July 2012, then on 16 December 2012, 26 December 2013 and 18 January 2014. All of these visits are accepted by the Respondent as being shown in his passport but the refusal letter suggests that the fact that the Sponsor was travelling to Yemen is not evidence that he was visiting his wife. I heard evidence from the Appellant and I found him to be a credible witness: he appeared to be, as Mr Sinker argued, genuinely concerned about his wife's safety and I looking at this evidence together with the other evidence before me I accept that these visits to Yemen were made because this was a genuine enduring marriage.
36. I am also satisfied that there is other evidence of communication both in WhatsApp and Viber. It was suggested that this evidence did not show who these calls were to and from but I do not accept that this is correct as the WhatsApp Screenshot translations are clearly from 'Sabrin' and in all the circumstances I am prepared to accept that this is the Appellant given that it's her name.
37. I have seen the 18 photographs of the Appellants and Sponsor together which are in the bundle, largely at their marriage, but some more 'casual' photographs. I accept that for religious and cultural reasons there are those who do not seek to memorialize their relationship and that this does not detract from the genuine nature of the relationship.

38. I accept the evidence of the Sponsor that he has been providing financial support for the Appellant as I found him to be a credible witness and this also provides support for the claim that this is a genuine and subsisting relationship.

39. Finally I note that there are a number of supportive letters from the Sponsors employer Liverpool Community Transport Mr Crofton. Clearly Mr Crofton has known the Appellant for some years as he was an apprentice there and as work colleagues do he has taken an interest in the Sponsors relationship with the Appellant. While accepting that this is the Appellants appeal and it is her intentions that are paramount I have no reason to disbelieve Mr Crofton's categorisation of this marriage as being genuine.

40. I am therefore satisfied that this is a genuine and enduring marriage and that the couple do intend to live together permanently and therefore the appeal should succeed.

#### **Decision**

**41. The making of the decision of the First-tier tribunal did involve the making of an error on a point of law as regards Appendix FM of the Immigration Rules**

**42. I set aside the decision.**

**43. I allow the appeal under the Rules.**

Signed

Date 9.5.2016

Deputy Upper Tribunal Judge Birrell