



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: UI-2023-003697  
[HU/00123/2022]

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 24 October 2023**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**ZAHRA HINASSI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance and not represented  
For the Respondent: Ms S Walker, Senior Home Office presenting officer

**Heard at Field House on 20 October 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Morocco, born in 1971. On 9 June 2021 she made an application for entry clearance as the spouse of a British citizen under Appendix FM of the Immigration Rules (“the Rules”). The respondent refused that application in a decision dated 7 December 2021. The appellant appealed to the First-tier Tribunal (“the FtT”) and her appeal was heard by First-tier Tribunal Judge Hussain (“the FtJ”) on 6 January 2023. In a decision promulgated on 7 December 2021 he dismissed the appeal.

2. The respondent's refusal of entry clearance was, in summary, on the basis that the appellant had not established that the sponsor, her husband, was divorced from a former wife prior to this marriage to the appellant that took place on 16 July 2015. She had not, said the respondent, provided evidence to establish that that earlier marriage had been dissolved.
3. The respondent also decided that the appellant had not provided sufficient evidence that she was exempt from the English language requirement of the Rules, concluding that the appellant's dyslexia did not exempt her from the language requirement.
4. The hearing before the FtJ was a remote hearing, not face-to-face. The appellant was not legally represented before the FtJ but her husband, the sponsor, attended remotely. The FtJ was concerned about the fact that the appellant was not legally represented but the sponsor's wish was for the hearing to proceed as they had no funds for a legal representative.
5. The FtJ resolved the matter of the English language requirement in favour of the appellant, finding that the expert evidence on the issue satisfied that aspect of the Rules, contrary to the respondent's view. Nothing further need be said about that aspect of the appeal.
6. At [9] of the FtJ's decision he said that there was no written statement from the appellant or the sponsor dealing with the issue raised. He said that the sponsor "showed me something on the screen, which I was not able to see". At [10] in response to the FtJ having said to the sponsor that he should have served the evidence in advance of the hearing, the sponsor said that he had uploaded them previously.
7. In relation to the date of the marriage, the sponsor said that he had amended the information as to the date of their marriage. At [12] the FtJ recorded that the sponsor said that they married on 13 July 2016 (the respondent having noted the date given as 16 July 2015).
8. In the grounds of appeal, prepared by the sponsor, in summary, complaint is made that the FtJ proceeded with the hearing and determined the appeal without having considered the documents that had been provided to the respondent, and to the tribunal, on 6 October 2022. The grounds also state that the sponsor attempted to deliver the documents by hand to the tribunal on 1 November 2022 and was told to bring them to the hearing.
9. At the hearing before me, the sponsor did not attend. The appellant is not in the UK. However, I am satisfied that the sponsor (and the appellant) were aware of the hearing because notice of it was served to the appellant c/o the sponsor's address.

10. Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) allows the tribunal to proceed with the hearing in the absence of the appellant. There was no explanation from the sponsor for his non-attendance. Had there been a reasonable explanation that would have been material to a decision to proceed without the presence of the sponsor, although I do note that he has some health conditions and was 78 years old at the date of the application.
11. In any event, given the views expressed by Mr Walker on behalf of the respondent, it was appropriate to proceed.
12. Mr Walker accepted that there had been procedural unfairness as asserted in the grounds. In particular, the FtJ did not have relevant documents, namely those which showed that the appellant had divorced his former wife on 29 September 2015. In addition, Mr Walker accepted that the date of the marriage between the appellant and the sponsor was 13 July 2016, as asserted by the sponsor at the hearing before the FtJ, also evidenced in documentary form.
13. In those circumstances, it was accepted on behalf of the respondent that the sponsor was legally free to marry the appellant, contrary to the FtJ's findings, which were made in the absence of relevant documentation which the respondent had been provided with.
14. In the circumstances, it was conceded that the FtJ had erred in law and that his decision needed to be set aside and the appeal allowed.
15. In the light of the above, I am satisfied that the FtJ did err in law in proceeding with the appeal in circumstances where he did not have relevant documents which had been provided, and which it appears the appellant was attempting to refer to during the course of the video hearing (see paragraph 6 above).
16. Furthermore, in the light of the respondent's concession as to error of law and having also seen the documents to which Mr Walker referred, I am satisfied that the decision must be set aside, and the decision re-made allowing the appeal.

### *Decision*

17. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside. I re-make the decision by allowing the appellant's appeal.

*A.M. Kopiczek*

Upper Tribunal Judge Kopiczek

20/10/2023