



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13521/2016

THE IMMIGRATION ACTS

Heard in Manchester
On Wednesday 17 January 2018

Decision & Reason Promulgated
On Monday 29 January 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SAMARA HASSAN

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr G McIndoe, solicitor, Latitude Law

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

DECISION AND REASONS

Background

1. The Appellant, who is a national of Pakistan, appeals against a decision of First-Tier Tribunal Judge Hussain promulgated on 22 February 2017 ("the Decision") dismissing her appeal against the Respondent's decision dated 20 April 2016 refusing her application dated 26 January 2016 for entry clearance as the spouse of a person who is recognised as a refugee in the UK, Mr S ("the Sponsor").
2. The Respondent refused the Appellant's application on the basis that her marriage to the Sponsor was conducted via proxies and was therefore not valid. The application was also rejected on the basis that the Sponsor's earnings did not meet the Minimum Income Requirement ("MIR") under the Immigration Rules

("the Rules"). Finally, the Respondent considered the application as if it were an application to join the Sponsor as his fiancée but refused that on the basis that the Appellant did not say that she intended to marry the Sponsor in the UK. The application was also refused outside the Rules on the basis that refusal did not involve a breach of human rights.

3. The Judge also found that the marriage was not valid. He did so, on the basis that the domicile of the Sponsor is in the UK and that validity of the marriage depends on that domicile. He also considered the issue of the Sponsor's income. Although he reached no concluded findings on this issue, he appears to have accepted that the evidence before him showed that the Sponsor's total annual income is in the region of £21,444 (which exceeds the MIR).
4. The Appellant pleads two grounds. First, she says there is an error of law in relation to the finding on the validity of the marriage. She points to case-law which she says establishes that the relevant law when determining the validity of a marriage is the "lex loci celebrationis" (ie the law of the country where the marriage is celebrated) and not the law of the country of domicile of one or both of the parties. Second, whilst accepting that there was an error made by the Sponsor when completing the Appellant's application, it is said that the Judge failed to take into account evidence before him in the form of employers' letters, payslips and personal bank statements which show that the Sponsor's income exceeds the MIR.
5. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 21 September 2017 in the following terms (so far as relevant):-

"3. There is an issue as to whether the sponsor's domicile was in the United Kingdom at the date of the marriage. He has refugee status here but he is a Pakistani national and he could not go to Pakistan to get married as he is a refugee. Lex loci celebrationis governs marriage validity. With regard to the financial situation, based on what was before the judge it appears that his income is satisfactory. The judge refers to this at paragraph 12 of the decision but the judge does not make conclusive findings on this issue as he was dismissing the claim based on the validity of the proxy marriage.

4. There are arguable errors of law in the judge's decision."

6. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.
7. I indicated at the conclusion of the hearing before me that I was satisfied that an error of law has been shown on both grounds and that I proposed to set aside the Decision and to re-make the decision on the papers on the evidence before me. Neither party objected to that course. I indicated that I would provide my decision and reasons in writing which I now turn to do.

Decision and reasons

8. I do not need to set out the passage in the Decision where the validity of the marriage is considered by the Judge. As Mr McIndoe submitted (correctly) and as Mr Harrison appeared to accept, based on case-law, the relevant law to determine the validity of a marriage in the UK is that of the country where the marriage is celebrated and not the law of the parties' domicile. The relevance of domicile is, as Mr McIndoe rightly submitted, relevant only to the question of capacity of the parties to marry which does not arise in this case.
9. In support of that proposition, I need do no more than set out the headnote in CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080 as follows:-
"There is no exception in immigration cases to the rule of private international law that the validity of a marriage is governed by the lex loci celebrationis and on the authority of Apt v Apt [1948] P83 there is no reason in public policy to deny recognition to a proxy marriage."
 That decision was cited with approval by the Court of Appeal in Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178 (at [16]). Although that latter decision concerns the validity of marriages between third-country and EEA nationals, it nonetheless confirms the principle that the validity of a marriage depends on the laws of the country where the marriage is celebrated.
10. For the foregoing reasons, the Judge has clearly erred in law by following the Respondent's lead in assessing the validity of the marriage by reference to the law of the country of domicile and finding the marriage not to be valid because proxy marriages are not valid in UK law. I therefore set aside his finding on this aspect.
11. In this case, the marriage was conducted in Pakistan. There is evidence that the marriage has been registered by the authorities of that country and there is also evidence in the form of a letter from the person who officiated at the ceremony about the way in which it was conducted (via Skype/phone). There is a bundle of photographs on file. Although there is no covering statement explaining their contents, it is clear that some of those are of the wedding ceremony and corroborate the manner in which the ceremony was conducted.
12. I am satisfied by that evidence that the marriage between the Appellant and the Sponsor is valid. Proxy marriages are valid in the laws of Pakistan as is recognised by the formal registration of the marriage, no question of the capacity to marry of either party arises and therefore UK law (the law of the Sponsor's domicile) has no part to play. As recorded in the case-law to which I have referred, there is no reason in public policy to deny recognition to a proxy marriage.
13. The other reason given by the Respondent for refusing the Appellant's application for entry clearance is that the Sponsor's income does not meet the MIR. I accept that the Judge did not consider it necessary to reach a concluded finding on this issue, having found that the marriage was not valid in UK law.

However, there is an error in [12] of the Decision where the Judge deals with this aspect because the Judge failed to note that there was evidence beyond simply the employers' letters confirming income and failed therefore to deal with that evidence. Further and in any event, the error made in relation to the validity of the marriage clearly impacts on the remainder of the Decision.

14. The Appellant has very helpfully provided a bundle of the evidence on which reliance is placed in this regard. Although Mr McIndoe submitted that this evidence was before both the Judge and the Respondent that cannot be so in relation to all of the evidence as a few items post-date the date of application. However, there is no longer any limitation on my ability to consider post-decision evidence in entry clearance cases and I therefore consider the issue of the Sponsor's income based on all the information before me.
15. I conduct this exercise mindful of the fact that the issue I have to decide is whether the decision to refuse entry clearance to the Appellant breaches her (and the Sponsor's) human rights rather than whether the Respondent's decision is in accordance with the Rules. It is though relevant to that issue whether the criteria under the Rules are substantially met.
16. The evidence as to income which is before me is as follows:-
 - (a) A schedule of employment income from 1 August 2015 to 31 January 2016 showing monthly payments of income from McDonalds Ltd and Alpha Fuels Ltd in relation to the Sponsor.
 - (b) Barclays Bank account statements in the name of the Sponsor beginning on 7 August 2015 and ending on 5 February 2016.
 - (c) P60 certificates for tax year ending 5 April 2016 showing earnings of £13,841.69 in relation to earnings from McDonalds Ltd and £6,669.00 in relation to Alpha Fuels Ltd.
 - (d) A letter from McDonalds Ltd dated 8 December 2015 confirming that the Sponsor has been employed as a full-time crew member by McDonalds Ltd since March 2013, earns £6.71 per hour and works approximately forty to forty-eight hours per week up to a maximum of forty-eight hours.
 - (e) Payslips from McDonalds Ltd from 13 February 2015 to 15 January 2016. Those show the Applicant's working hours in units. Insofar as the dates correspond with the bank statements at (b) above, the net amounts earned correspond to the amounts credited to the Sponsor's account.
 - (f) A letter from Alpha Fuels Ltd dated 8 December 2015 confirming that the Sponsor has been employed since 1 February 2015 as an Assistant Manager working sixteen hours (flexible) per week at £9 per hour. His gross pay is said to be £7,488 per annum.
 - (g) Payslips from Alpha Fuels Ltd from 15 March 2015 to 15 April 2016. Those show that the number of hours worked vary from 41 hours to 74.25 hours per month. The hours worked are though since September 2015 relatively stable at between sixty and

seventy-five hours per month. That equates to about sixteen hours per week as is confirmed by the employer's letter. Insofar as the dates correspond with the bank statements at (b) above, the net amounts earned correspond to the amounts credited to the Sponsor's account.

17. The schedule of income is said to show an average monthly income of £1644.34 and an average annual income of £19,732.08. The P60 certificates to which I have referred show a total income of £20,510.69.

18. The bank statements show an opening balance on 7 August 2015 of £5,419 and a closing balance on 5 February 2016 of £7,064.30. The covering summary also shows that the Sponsor has an "Everyday Saver" account which held a balance of £10,009.32 on 4 September 2015 (the closing date of the first statement) and £16,017.74 on 5 February 2016. The lowest balance shown in the current account statements is on 14 December 2015 when the balance stood at £3883.21. Those statements also show regular monthly receipts from Alpha Fuels Ltd and McDonalds Ltd. Those are as follows:-

Alpha Fuels Ltd

17 August 2015:	£525.60
15 September 2015:	£471.50
15 October 2015:	£471.70
18 November 2015:	£471.50
15 December 2015:	£482.40
15 January 2016:	£432.00

McDonalds Ltd

28 August 2015:	£938.31
25 September 2015:	£986.57
23 October 2015:	£1001.96
20 November 2015:	£897.52
18 December 2015:	£938.84
15 January 2016:	£915.67

19. Although as is evident from the employer's letters and payslips, the hours worked vary from week to week and month to month, the amounts earned are relatively consistent. The lowest amount earned is £1347.67 (net) in January 2016. The highest amount is £1473.66 (net) in October 2015. Averaged over the period, the gross monthly income is £1644.34 as confirmed by the schedule which, applied to a year is £19,732.08. That is if anything lower than the figure shown on the P60 certificates for the relevant tax year.

20. Having regard to what those documents show, the Sponsor's income exceeds the MIR.

21. The issue raised by the Respondent in the refusal of entry clearance as to the relationship is based on the validity of the marriage. In light of what I say about the validity of the marriage, I am satisfied that the Appellant is married to the Sponsor.
22. It is not said that the relationship is not otherwise genuine. If confirmation of that were needed, the Respondent went on to consider the relationship under the Rules relating to fiancées which there would have been no point in doing if the relationship were not considered to be genuine. The application on that basis was refused because the Appellant did not say that she intended to marry the Sponsor on arrival in the UK (her position no doubt being that she had no need to do so as she was already legally married).
23. I have seen no evidence which causes me to doubt that the relationship is genuine. There is limited evidence of the couple together for the obvious reason that they have not been able to live in the same country. The Appellant had applied to visit the Sponsor in the UK in September 2015 but was refused a visa, no doubt on the basis that she was in a relationship with a person settled in the UK. The Sponsor cannot visit the Appellant in Pakistan because he is a recognised refugee from that country. There are however within the bundle of photographs to which I refer above, a few photographs which show them together which were taken, according to the grounds of appeal, during their honeymoon visit to Turkey in November 2015.
24. Based on the evidence on file and that the Respondent does not take issue with the genuineness of the relationship, I accept that the relationship between the Appellant and the Sponsor is genuine and that the Appellant has a family life with the Sponsor which engages Article 8 ECHR.
25. I also accept that refusal of entry clearance interferes with that family life sufficiently to require justification. In particular in this case, there is no question of the Sponsor joining the Appellant in Pakistan or even being able to visit her there as he is recognised as a refugee from that country. There are clearly insurmountable obstacles to family life being conducted in Pakistan. That factor also weighs heavily in the balance when considering the proportionality of the decision to refuse entry clearance. The effect of refusing the Appellant entry clearance is that the Appellant and the Sponsor are deprived of the opportunity to continue their family life in the same country and would be constrained to conducting it by means of telephone and other similar contact (as they have done since their wedding).
26. Turning then to the public interest justifying a refusal of entry clearance, the matters relied upon by the Respondent are that the marriage is not valid and that the Sponsor does not earn enough to meet the MIR. I have already explained why I reject both of those reasons. I am satisfied on the evidence which I have seen that the Sponsor earns an amount which exceeds the MIR or at least has sufficient funds to be able to maintain the Appellant. There is no suggestion that

effective immigration control requires the Appellant's exclusion from the UK for any other reason. That the application substantially meets the criteria under the Rules is relevant to the weight to be given to the public interest.

27. Balancing the significant consequences for the relationship between the Appellant and the Sponsor of refusing the Appellant entry clearance and the weight to be given to the public interest which is limited, in particular because the application substantially meets the criteria for entry under the Rules, I am satisfied that the decision to refuse the Appellant entry clearance amounts to a disproportionate interference with the right to respect for the family life between the Appellant and the Sponsor. It follows that I find that the decision to refuse entry clearance is unlawful under section 6 of the Human Rights Act 1998. I therefore allow the appeal.

DECISION

I am satisfied that the Decision contains material errors of law. The decision of First-tier Tribunal Judge Hussain promulgated on 22 February 2017 is set aside. I re-make the decision. I allow the appeal.

Signed

Dated: 26 January 2018



Upper Tribunal Judge Smith