



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/13498/2013

Appeal Number:
OA/13499/2013

THE IMMIGRATION ACTS

Heard at North Shields	Determination Promulgated
On 1 July 2014	
Prepared on 1 July 2014	On 10 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**F. S.
A. A.
(ANONYMITY DIRECTION)**

Appellants

And

ENTRY CLEARANCE OFFICER ISTANBUL

Respondent

Representation:

For the Appellant: Ms Mendoza, Counsel instructed by Brar & Co
Solicitors

For the Respondent: Mr Dewison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Iran who applied on 12 March 2013 for entry clearance for settlement as the spouse and son of the sponsor, who had been granted humanitarian protection in the UK.

2. By separate decisions made on 22 May 2013 the Respondent refused those applications by reference to paragraphs 352A (iii) and 352D (iii) of the Immigration Rules. He was not satisfied that the sponsor and the First Appellant were free to marry one another at the date of the marriage relied upon, alternatively that the marriage of the sponsor and the First Appellant was subsisting at the date the sponsor had fled Iran.
3. The Appellants lodged an appeal with the First Tier Tribunal against those decisions, and as a result the decisions were the subject of review by the ECM on 7 January 2014. The ECM upheld the decision.
4. The appeals were heard and allowed by Judge Cope in a Determination promulgated on 1 April 2014. Although the parties were agreed that the Respondent had considered the applications by reference to the wrong provisions of the Immigration Rules, they were also agreed that the material parts of paragraphs 352FA and 352FG were in identical terms. The parties agreed therefore that this was not a situation that required the decision to be simply set aside as not in accordance with the law, leaving outstanding applications awaiting a lawful decision. The Respondent invited the Judge to treat this as a typographical error of no consequence, and to determine the appeals on their merits, and the Appellants agreed to this course, and thus nothing turns on the Respondent's error.
5. The Respondent applied to the First Tier Tribunal for permission to appeal on two grounds, and permission was granted by Judge Plumptre on 9 May 2014.
6. The Appellants filed no Rule 24 Notice and neither party made a Rule 15(2A) application to introduce further evidence.
7. Thus the matter comes before me.
8. I accept as Ouseley J did in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. The same can properly be said for a witness' oral evidence.

The grounds

9. The grounds are not well drafted, but do appear to assert first that the Judge made an inconsistent or perverse finding of fact, and, second that the Judge failed to resolve a disputed issue of fact.
10. Mr Dewison began by conceding that the draftsman had overlooked the fact that there had been reference to contact between the First Appellant and the sponsor by mobile phone at the interview of the sponsor in the course of his asylum claim. Thus he withdrew the second ground.
11. Mr Dewison then accepted that there was no viable challenge to the Judge's finding of fact that the sponsor had indeed been divorced from his first wife, before the date of the marriage relied upon to the First Appellant. Thus the sponsor was indeed free to marry the First Appellant at the date of the marriage relied upon.
12. It was not in issue before the Judge that the Second Appellant was the son of the sponsor and the First Appellant.
13. Although the draftsman of the grounds appears to have been under the impression that a genuine and subsisting marriage could not exist at the same time that one party to that marriage was conducting an extra-marital affair, or, that a genuine and subsisting marriage could not survive the discovery of that affair by the other party to that marriage - Mr Dewison quite properly accepted that he could advance no such argument.
14. In all of these circumstances I am satisfied that there is no merit in the first ground either.

Conclusions

15. In my judgement, and notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds. It was open to the Judge to make the findings of fact that he did, for the reasons that he gave, and to reach the conclusions that he did. The complaints made about the Judge's approach reveal no material error of law that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 13 January 2014 contained no error of law in his decision to allow the Appellants' appeals, which requires those decisions to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes
July 2014

Dated 1

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 1 July 2014