



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/02211/2018
EA/02562/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 30th April 2019**

**Decision & Reasons Promulgated
On 03rd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**FOZIA [T]
[P T]**

(ANONYMITY NOT DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. A Khan; instructed by Thompson & Co Solicitors

For the Respondent: Mr. C. Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Pakistan. The second appellant is the daughter of the first appellant. The appellants applied for an EEA family permit to join Mr [MB], a Belgian national, in the United Kingdom. The first appellant claims to be the wife of Mr [B] and the second appellant claims to be his step-daughter. The applications were refused by the Entry

Clearance Officer (“ECO”) for the reasons set out in the decisions dated 7th December 2017. The ECO was not satisfied that the first appellant has genuinely formed a relationship with Mr [B], and was not therefore satisfied that the appellants are family members of an EEA national in accordance with Regulation 7 of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”). The ECO was not satisfied that the appellants meet all the requirements of Regulation 12 of the 2016 Regulations.

2. The appellants appeal against those decisions, was heard by First-tier Tribunal (“FtT”) Judge A W Chambers. The Judge dismissed the appellants appeals against the decisions made by the ECO for the reasons set out in a decision promulgated on 4th December 2018. It is that decision of the FtT Judge, that is the subject of the appeal before me.

The decision of FtT Judge Chambers

3. At paragraphs [2] to [5] of the decision, the Judge refers to the reasons given by the ECO for refusing the applications, and the reasons given by the Entry Clearance Manager for maintaining the decisions. In addition to the matters relied upon previously, at the hearing of the appeal the Home Office Presenting Officer raised concerns about the evidence provided regarding the dissolution of the sponsor’s earlier marriage.
4. At paragraphs [6] to [9] of the decision, the Judge sets out the evidence and submissions heard by the Tribunal. On behalf of the respondent it was submitted that the appellants have failed to establish that the sponsor had gone through the correct procedure for divorce in Pakistan. The Judge’s findings and conclusions are set out at paragraphs [10] to [13] of the decision. At paragraphs [12] and [13] of the decision, the Judge concluded as follows.

“12. It is not shown to the degree requisite namely the balance of probabilities, that the sponsor obtained a divorce in the correct manner; as a result of appropriate proceedings or that there had been appropriate notification to the Chairman of the Union Council under the Muslim Family Laws Ordinance.

13. It is not shown pursuant to Regulation 7(1) of the Immigration (European Economic Area) Regulations 2016 that the first appellant is the sponsor's spouse or that her daughter, the second appellant, is the sponsors and stepdaughter. The appeal is dismissed."

The appeal before me

5. In the grounds of appeal, it is said that the FtT Judge erred in his conclusion that the sponsor has not obtained a divorce in the correct manner under the Muslim Family Laws Ordinance. Although it is correct that the Muslim Family Laws Ordinance applies to all Muslim citizens of Pakistan wherever they may be, Ahmadis are not considered Muslims for the purposes of Pakistani laws. The appellants draw attention to the country guidance decision in MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 in which the Upper Tribunal noted that in 1973 the Pakistan Parliament amended the Constitution, effectively declaring Ahmadis (*together with a number of other minority religions*) to be non-Muslims. The appellants also refer to the respondent's Country of Origin Information and Guidance: Pakistan: Interfaith Marriage (Version 1) January 2016 which confirms that marriages in Pakistan are registered and performed according to a person's religious group.
6. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan on 1st March 2018. The matter comes before me to consider whether the decision of the FtT Judge involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
7. On behalf of the respondent, Mr Bates accepts that the conclusion of the FtT Judge that the appellants sponsor had not obtained a divorce in the correct manner as a result of appropriate proceedings, or by appropriate notification to the Chairman of the Union Council under the Muslim Family Laws Ordinance, is irrational. He accepts that, as an Ahmadi, the appellants sponsor is not considered to be a Muslim for the purposes of Pakistani laws, and that he would be treated in much the same way as members of other faiths. He concedes that the decision of the FtT Judge is

infected by a material mistake as to fact, such that there is an error of law, and the decision should be set aside.

8. As to disposal, Mr Bates submits that the FtT Judge failed to engage with the underlying concerns that had been expressed by the ECO in the decisions of 7th December 2017, regarding the relationship between the first appellant and the sponsor. The ECO was not satisfied that the first appellant has genuinely formed a relationship with the sponsor, and that their marriage is subsisting. Having decided that the appellant's sponsor had not obtained a divorce in the correct manner, the FtT Judge did not go on to address the concerns about the relationship. In the circumstances, the appropriate course is that the matter be remitted to the FtT for hearing afresh.
9. Mr Khan on behalf of appellant submitted that the focus of the Presenting Officer before the FtT, appears to have been upon whether the appellant's sponsor had obtained a divorce in the correct manner. It is now accepted that the decision of the FtT Judge in that respect, is erroneous. Mr Khan accepted that the Judge had failed to address the concerns about the relationship between the first appellant and the sponsor, the issue that was at the heart of the decisions made by the ECO.
10. As to the disposal of the appeal, both Mr Bates and Mr Khan submit that the appropriate course is therefore for the matter to be remitted to the FtT for hearing afresh. I consider that where a first instance decision is set aside on the basis of an error of law involving a mistake as to fact, the appropriate course is to remit the matter to a newly constituted FtT for a fresh hearing. I have taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
11. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

12. The appeal is allowed. The decision of FtT Judge Chambers promulgated on 4th December 2018 is set aside.
13. The matter is remitted to the FtT for rehearing afresh with no findings preserved.

Signed	Date	30 th April 2019
Deputy Upper Tribunal Judge Mandalia		

FEE AWARD

I have remitted the matter to the FtT and a decision as to whether there should be a fee award will be made by the FtT.

Signed	Date	30 th April 2019
Deputy Upper Tribunal Judge Mandalia		