



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

PA/00495/2019

THE IMMIGRATION ACTS

Heard at Glasgow  
on 11 July 2019

Determination and Reasons  
Promulgated  
on 17 July 2019

Before

UT JUDGE MACLEMAN

Between

**LAWREEN [J]**

Appellant

and

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

Respondent

For the Appellant: Mr Diwyncz, Senior Home Office Presenting Officer  
For the Respondent: Mr Caskie, Advocate, instructed by Latta & Co, Solicitors

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against the decision of FtT Judge Agnew, promulgated on 20 March 2019, dismissing the appellant's appeal on asylum and humanitarian protection grounds, but allowing it on human rights grounds.
3. The SSHD's grounds of appeal are set out in the application filed on 2 April 2019.

4. Mr Diwyncz sought to raise two additional matters, as below. He accepted that these came late, but explained that the file was available to him only late on the day before the hearing:
  - (i) The two villages which the appellant mentioned as covering his place of origin were not outside the IKR, as wrongly accepted in the refusal letter and subsequent proceedings to date, but inside it. That undermined his claim. The matter was an objective fact of geography and readily verifiable.
  - (ii) The FtT accepted that the appellant was validly married to his wife, who had entered the UK unlawfully to join him during the proceedings. The marriage was said to have been contracted by telephone while his wife was in Turkey. There had been no evidence to suggest that such a marriage was valid in the law of Turkey or for present purposes. The issue was so obvious that it was an error for the FtT not to take it, even in the absence of any submission.
5. Mr Diwyncz relied also upon the original grounds, to which he had nothing to add. He submitted, finally, that the case should be remitted for a fresh hearing.
6. Mr Caskie submitted along these lines:
  - (i) The proposed amendments to the grounds came too late.
  - (ii) It was not clear from information on file that the two villages were in the IKR, as they were said to be in Ninewah, which was not listed as one of the governorates making up the IKR.
  - (iii) Whether the marriage was formally valid made no difference to the outcome, as it was the relationship which counted.
  - (iv) In any event, the appeal was allowed on private life, a point missed entirely by the grounds.
  - (v) The decision was not one which might have been reached by all judges, but it was not perverse or irrational. The grounds and the grant of permission verged on that proposition, without quite making it, but it was not advanced by the presenting officer, and could not be supported.
7. Having reserved my decision, and after consideration, I prefer the submissions for the appellant.
8. Mr Diwyncz is not personally responsible for the very late stage at which amendment was sought, but these are points which the respondent could and should have advanced long ago.
9. The two villages may well be in the IKR, a matter which should be resolvable beyond doubt by objective information; but that is not something which the FtT could be expected to pick up for itself.

10. The “marriage”, on the evidence before the FtT, is almost certainly not valid. That point is obvious, and should have been picked up even in absence of any comment by the representatives in the FtT. However, the submission for the respondent did not show it to be material to the outcome.
11. The judge at paragraph 42 effectively found that the appeal succeeded on private life, before turning to family life.
12. The original grounds do not expressly say that the decision is perverse, but in substance they describe the claim as “entirely unmerited”, overstate the SSHD’s side, and recognise nothing in the claim or in the decision on the appellant’s side.
13. This was, as Mr Caskie recognised, a case which might have gone either way; but the respondent has not shown that the FtT’s resolution of it was perverse, or that it involved the making of any error on a point of law, by which it should be set aside.
14. The SSHD’s appeal to the UT is dismissed. The decision of the First-tier Tribunal stands.
15. No anonymity direction has been requested or made.



12 July 2019  
UT Judge Macleman