



IAC-TH-CP-V1

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

Appeal Number: OA/12896/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13th October 2014
Prepared on 16th October 2014

Determination Promulgated
On 10th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR DYARY KADIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISTANBUL

Respondent

Representation:

For the Appellant: Ms M. Vidal of Counsel
For the Respondent: Mr S. Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Australia born on 1st July 1973. He appealed against a decision made by the Respondent on 9th May 2013 to refuse him entry clearance for

settlement as the spouse of Ms Taherahe Akbar, a British citizen (“the Sponsor”) pursuant to paragraph 281 of the Immigration Rules and Article 8 (right to respect for private and family life) of the European Convention on Human Rights. His appeal was dismissed by Judge of the First-tier Tribunal Bart-Stewart sitting at Taylor House on 1st April 2014 and the Appellant appeals with leave against that decision.

2. The Appellant was born in Iraq and has dual Iraqi and Australian citizenship the latter granted to him on 28th March 2001. The Sponsor was born in Iran and came to the United Kingdom in March 2003. She was granted United Kingdom citizenship in 2012. The parties’ case was that they had met in Birmingham in 2006 at a time when the Appellant was visiting his brother and family on a six month visit visa. The couple’s relationship began in 2007 and they started to live together in 2008. The Appellant went to Kurdistan to obtain medical treatment after having to leave the United Kingdom in 2009.
3. The Sponsor applied for entry clearance to Australia as the couple planned to marry but this was refused. They then travelled to various places and the Appellant tried unsuccessfully to enter the United Kingdom from various ports. Each time he was refused leave to enter. He returned to the United Kingdom in 2010 and joined the Sponsor but voluntarily left in 2011. The couple continued to meet in Europe but then decided to marry in Denmark which they did on 23rd November 2012. The Appellant went to Germany and stayed with the Sponsor’s son. From there he travelled to Turkey where he made the application the refusal of which has given rise to the present proceedings. The Sponsor joined him in Turkey for a time. They have been in constant contact since 2012 by telephone and have travelled together around Europe. The Sponsor suffers from depression and has support from a social worker.

The First Instance Determination

4. The Respondent refused the application principally because he was not satisfied that the Appellant and Sponsor were in a genuine and subsisting relationship. In interview the Appellant had not known the Sponsor’s address and there was no persuasive evidence of intervening devotion. In her determination the Judge placed some emphasis on this last point at paragraph 26 writing:

“[The Sponsor] said that [the Appellant] went to Australia. She moved the next day and two days later he texted to say that he was in Kurdistan. They later met in Greece, Germany and they married in Denmark on 23rd November 2012. After three days they went back to Germany. The Appellant stayed there with her son and the Sponsor returned to the UK. The Sponsor has not been in employment. No explanation is given [why] she could not remain longer in Germany with her husband. Other than the Sponsor having a son who lived in Germany, there is no apparent reason or credible explanation given for hopping around Europe, including France, Dublin, Greece ending in a marriage in Denmark when the Sponsor has a family connection in Germany”.

5. The Appellant was interviewed by Immigration Officers on 24th February 2011 and said at that time that he was living with his brother as opposed to with the Sponsor. The Judge did not accept the explanation given by the parties for that incorrect answer (if indeed it was). The Sponsor's claim was that the Appellant had given the wrong address because neither the Appellant nor the Sponsor wanted the Sponsor to be bothered with anyone coming to the Sponsor's house. As the Judge pointed out at paragraph 27 if that was the case there was no need for the Sponsor to volunteer other information that he had a fiancée by the name of Tara Alan. An alternative explanation that the Sponsor did not want to attract adverse attention because her son had been refused entry clearance was rejected by the Judge at paragraph 28 since the interview on 24th February 2011 was ten months after the Sponsor's son's application for entry clearance had been rejected with no outstanding appeal.
6. The Appellant's representatives had submitted a bundle for the hearing at first instance which ran to 772 pages. I comment in more detail on that bundle below but suffice to say at this stage that at paragraph 29 the Judge rejected the idea that the documentation in the bundle supported the proposition that the Appellant and Sponsor were in a genuine relationship. At paragraph 29 she wrote:

"The Appellant's bundle includes a number of hotel booking forms for different hotels in Greece in June 2012. Most are for one night. Although they are for two guests, they are all in the name of the Sponsor with no indication of the name of the other guest. There are a number of travel itineraries but they are not in any order and no attempt has been made by the representatives to demonstrate that the Appellant and Sponsor were in the same countries at the same time."
7. The Appellant and Sponsor had said that they had married in Denmark because this would be quicker than marrying in Germany but the Judge noticed that the wedding booking form (which was at page 393 of the bundle) showed that they had paid for a standard fee for two weeks' notice rather than the express fee. Medical evidence referred to the Sponsor visiting her son in Germany but not the Appellant. The Sponsor's daughter's evidence was rejected by the Judge as not adding anything of significance to the case as she could not remember if it was in Birmingham or London where her mother ran a shop. This was particularly striking given the daughter's claim to have travelled regularly to help her mother the Sponsor.
8. There were a large number of short email messages in the bundle which were postdecision in a foreign untranslated language. There was little in them expressing terms of endearment or anything which would suggest a close relationship. The Judge found there was no documentary evidence of the parties having lived together for the period claimed or that they had been in a relationship. She was not satisfied that the Appellant could show that he and the Sponsor were in a genuine relationship and that each intended to live permanently with the other. As the

parties were not in a genuine relationship the Judge found that Article 8 was not engaged and she dismissed the appeal.

The Onward Appeal

9. The Appellant's grounds of onward appeal argued that the Judge had focussed too much on the issue of credibility. The Judge had not explained adequately how she came to the conclusion that the Sponsor had a propensity to mislead. Nor had she given adequate reasons for her adverse credibility finding on the Sponsor's daughter's evidence. It was irrelevant to find that the Appellant's family or friends did not attend the wedding or that the medical report had not referred to the Sponsor seeing the Appellant in Germany. The Judge should have set out clearly and openly what evidence was considered in reaching a finding.

10. The application for permission to appeal came on the papers before First-tier Tribunal Judge Fisher on 20th June 2014. He refused permission to appeal stating there was no merit in the grounds:

"The Judge had to focus upon the nature of the relationship between the Appellant and his Sponsor. She gave reasons for concluding that their relationship was not genuine and subsisting. Those findings were open to her on the evidence and cannot be described as perverse or irrational in any way. ... The Judge could not be expected to refer to each page of the 772 page bundle lodged on behalf of the Appellant. She did however make reference to several documents within it. She was entitled to find that the relationship was not subsisting in the sense set out in GA Ghana. On that basis she did not need to proceed beyond the first of the questions set out in Razgar."

11. The Appellant renewed his application for permission to appeal on the same grounds which came before Upper Tribunal Judge Pitt on 18th August 2014. In granting permission to appeal she wrote:

"There were clearly difficulties for the Appellant to overcome here given his somewhat unusual history, involvement with the authorities in Turkey and the Sponsor's financial situation. It is just arguable however that the First-tier Tribunal Judge did not take into account what was potentially material evidence of the relationship of the Appellant and Sponsor in the Appellant's bundle of materials. Even if that could not have altered the application under the Immigration Rules, it could have shown that a family life existed and an Article 8 assessment would then have followed which went beyond that conducted by the First-tier Tribunal Judge".

12. On 3rd September 2014 the Respondent replied under Rule 24 to the grant of permission stating it was clear why the Judge rejected the Appellant's account of a subsisting and loving relationship between him and the Sponsor. The Respondent continued:

“The Appellant frequently sought to enter the UK and clearly did so illegally. Paragraph 6 refers. The explanation for the Appellant’s lack of knowledge of his wife’s address and the reasons for the incorrect name and address of the Sponsor was rejected at paragraph 27. There was no adequate evidence of a loving relationship (this not being an arranged marriage). On the facts before the Judge it was fully open to her to conclude that the claimed relationship was not made out and in addition that the Appellant’s character, conduct and associations were such that it was not appropriate to grant entry clearance. It was the Appellant’s burden to discharge and the Judge could not be expected to carry out a forensic analysis of the Appellant’s 772 page bundle to try to locate evidence to make out his case. The reliance on unreported case law is not in accordance with the law and the Tribunal directions. The grounds are a disagreement with well-reasoned findings.”

The Hearing Before Me

13. In oral submissions Counsel argued that the tone of the determination stated that the Judge had “raised more than one eyebrow” on conduct. Although the parties had paid the regular fee for the wedding the email evidence in the bundle showed that there was a much shorter wedding timetable. I queried that point with Counsel. The emails at page 395 of the bundle referring to the wedding indicated that as at 15th November 2012 the person making the arrangements expected the wedding of the Appellant and the Sponsor to be the Thursday or Friday of the following week and there appeared to be no indication on the weddings booking form when the original application for the wedding was made. This implied that the Judge had been correct to reject the explanation given why the parties should marry in Denmark at all (that it was said to be quicker than in Germany) when they had not sought an express wedding but merely the standard one.
14. Counsel argued that the Judge needed to give more explanation why she came to the conclusion that there was a tendency to mislead. There were a number of documents in the bundle which were not referred to. These would show that the Appellant and Sponsor at or around the same time were travelling to the same place for example Amsterdam. At page 371 of the bundle there was a boarding pass issued by the airline EasyJet to the Sponsor on a flight to Amsterdam 6th July 2010 and a tax invoice from a company called United Travel Centre dated 16th June 2010 to the Appellant for a return ticket to Amsterdam. There were two money transfers in the Appellant’s bundle. This was money belonging to the Appellant held by the Sponsor which she was returning to the Appellant. There was evidence of travel tickets bought for the Appellant by the Sponsor.
15. The Judge had a letter of support written by the partner of the Appellant’s stepdaughter. He had said he was confident of the genuineness of the relationship between the Appellant and the Sponsor. He had not attended to give evidence as he

had problems with travelling but there was enough evidence in the bundle to establish that there was a family life between the Appellant and Sponsor.

16. In reply the Presenting Officer argued that the Judge had given cogent reasons for her adverse credibility findings. The evidence in an untranslated foreign language could not be taken into consideration. Much of the evidence did not take the case further. For example at page 317 there was a hotel receipt in the Appellant's sole name. The document referred to at page 339 where it was said the Sponsor had booked a travel ticket for the Appellant gave an email address which could be anybody's as opposed to proving it was the Sponsor's. Only one of the money transfer receipts predated the decision the other was postdecision evidence. There was thus only one remittance upon which the Appellant could rely. In response Counsel noted that the sole issue in the case was the question of whether there was a genuine relationship. There had been no cross appeal by the Respondent in relation to the suitability requirements of Appendix FM. Counsel acknowledged that only some of the large Appellant's bundle was useful while some was not. There were a lot of telephone records which went back over a considerable period of time.
17. I queried with Counsel whether there had been any evidence presented to the Judge to explain why the Appellant and Sponsor had travelled around Europe as much as they had. After taking instructions Counsel stated that due to the Appellant's visa he was only able to stay in some countries for three months or others for six months whereas the Sponsor could travel to all 27 countries of the European Union. However it was not clear from the determination what level of examination there had been on the reason for the various travel arrangements. The focus in the case had been on the credibility of the Appellant and the Sponsor. The appeal should be allowed.

Findings

18. The issues in this case were flagged up by the Respondent in the notice of refusal. The Respondent did not accept that the Appellant and Sponsor were in a genuine and subsisting relationship and particularly pointed to the lack of evidence of intervening devotion. The response of the Appellant's representatives to the case the Appellant had to meet was to file at court a chaotic bundle running to 772 pages. That was not 772 pages' text, a large number of the pages were blank. The number of pages with text was just over one half of the final page number. The documents between pages 499 and 610 were in a foreign untranslated language or were blank. The Judge had evidently done her best with this unwieldy bundle making various comments on the documents such as at paragraph 29 when she wrote:

"The Appellant's bundle includes a number of hotel booking forms for different hotels in Greece in June 2012. Although they are for two guests, they are all in the name of the Sponsor with no indication of the name of the other guest. There are a number of travel itineraries but they are not in any order and no

attempt has been made by the representatives to demonstrate that the Appellant and Sponsor were in the same countries at the same time”.

19. As First-tier Tribunal Judge Fisher correctly observed the Judge could not be expected to refer to each page of the 772 page bundle lodged on behalf of the Appellant. Nor as the Respondent’s reply notice under Rule 24 correctly observed could the Judge be expected to try to locate evidence to make out the Appellant’s case for him. It was the Appellant’s case and the burden was on him to show he and the Sponsor were indeed in a relationship even if they were conducting that relationship at a distance. What instead happened was that a confused jumble of hotel receipts, boarding cards and flight invoices were muddled up in the middle of a large bundle with no effort made to explain what the parties were doing.
20. It was reasonable for the Judge to expect the parties’ statements to at least give some form of chronology of how they had travelled around Europe and stayed together (if indeed that was the case) giving dates and periods with reference to the documents. That was not done. Instead the Appellant relies on the submission that the documentation shows that the Appellant and Sponsor were at the same location at around the same time. As the Judge pointed out most of the hotel booking forms etc. were for one night only (there were some for two or three nights). Given that the burden of proof was on the Appellant to establish that he and the Sponsor were conducting their relationship in this way, the lack of any explanation why the Appellant and Sponsor were travelling to so many different countries was inevitably a matter that the Judge would place weight on.
21. She pointed out the parties’ connection such as it was was to Germany where the Sponsor’s son lived. If the Appellant and Sponsor were travelling to other places for a holiday it was reasonable to have expected some evidence to be produced to show that they had both stayed together for substantial periods of time at those locations. The Judge found that there was no such evidence, and nothing that I was referred to in the Appellant’s bundle controverted that finding. The Judge’s findings were open to her on the evidence.
22. It is axiomatic that a Judge is not obliged to set out each and every piece of evidence put before him or her when arriving at their conclusions. That the Judge did not mention in terms a statement from a witness who did not attend to give evidence does not of itself undermine the conclusions the Judge reached. Rather it serves to illustrate that the challenge made to the Judge’s determination is a reasons based challenge but amounts to no more than a disagreement with the result. This was a case on which the credibility of the evidence would be of importance. Although it might have been helpful for the Judge to have set out her findings on the question of the Appellant’s address in one place in the determination the thrust of the determination is clear. The Appellant did not mention the Sponsor in his interview but if he was withholding that information from the Respondent there was no reasonable explanation why he went on to give a completely different account to the Respondent in interview than what he gave to the Judge at the hearing. The Judge

was dealing with an Appellant who was prepared to mislead the Respondent and approached his evidence with some degree of caution as she was entitled to do.

23. At the time of the refusal the Appellant was detained by the Turkish authorities pending his deportation to Australia as he had been arrested for drug related offences. That deportation was eventually carried out. The Judge was entitled to look at the evidence in the round and come to an adverse view of the Appellant's credibility based on his immigration history, his history of attempted deception of the Respondent and the somewhat incoherent case that he and the Sponsor were putting forward as to what their relationship was claimed to be. The Judge made a finding that there was not a genuine and subsisting relationship between the Appellant and the Sponsor. They knew what case they had to meet but they had failed to meet it. Since there was no relationship between the Appellant and the Sponsor no issue as to Article 8 could arise and the Judge was correct not to proceed with an analysis on an "even if" basis.

Decision

The decision of the First-tier Tribunal Judge did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appeal dismissed.

The appeal is dismissed, no question arises as to a fee award.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 7th day of November 2014

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Deputy Upper Tribunal Judge Woodcraft