



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

Appeal Number: OA/14013/2013

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower, Birmingham**

**Decision & Reasons  
Promulgated**

**On 15<sup>th</sup> September 2015**

**On 29<sup>th</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRENCH**

**Between**

**SALMA NAEF ESMAIL ESMAIL  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(ON BEHALF OF ECO ABU DHABI)**

Respondent

**Representation:**

For the Appellant: Mr O Shoker of S H & Co Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who is residing in Yemen and is a citizen of that state, had applied for entry clearance to come to the United Kingdom to join the Sponsor Ghaleb Mohammed Mahmood, a British citizen, as his wife. The application was refused as it was not accepted that the Appellant was in a genuine and subsisting marriage with the Sponsor and that the couple intended to live permanently together. The Appellant exercised her right of appeal and in doing so requested that at the hearing there should be available for the Sponsor an Arabic interpreter able to speak the Yemeni dialect.

2. The appeal was heard before First-tier Tribunal Judge Pirotta at Birmingham on 3<sup>rd</sup> July 2014. On that occasion the Sponsor was not professionally represented. The judge was not satisfied that it had been shown that the couple were in a genuine married relationship which was subsisting and she dismissed the appeal.
3. The Appellant, by this time represented by her current solicitors, applied on 11<sup>th</sup> August 2014 for permission to appeal. In the grounds it was contended that the judge had made a material error of law by deciding to hear the appeal in the absence of an official court interpreter and by going on to hear the case with the aid of a person who was a member of the Yemeni community who had accompanied the Sponsor to the hearing. As a consequence it was argued that the Sponsor had not been able to give satisfactory oral evidence and address the issues as to the marriage upon which the judge had relied. There were explanations for alleged discrepancies which the Sponsor would have been able to put forward. On this basis, of alleged procedural irregularity, permission was granted.
4. By the time of the hearing before me no further documents had been served on behalf of the Appellant. At the commencement of the hearing Mr Shoker said that the Sponsor was currently in hospital and he handed in a letter to that effect in which it was stated that the Sponsor had been admitted to a hospital in Birmingham on 1<sup>st</sup> September suffering from cardiac failure. There was no application for an adjournment at that stage. I had checked the original file and noted that according to the printed Record of Proceedings there had been an official interpreter arranged for the original hearing. That document reads "Interpreter: Applied Language Solutions: Ms Sofia Manaoui-Tri 1151751 language Arabic (Middle-Eastern)". Mr Shoker said that the Sponsor said that someone had accompanied him and interpreted and he would not be able to add to that assertion.
5. Mr Smart for his part said that it has not been established that somebody else had interpreted rather than an official interpreter. He noted from the Home Office file that the notes made by the Presenting Officer made no reference to any problems with securing the services of an interpreter. The judge had in fact said at paragraph 18 of her decision that no witnesses had been present to support the application, which rather indicated that there had not been an interpreter from the community. The determination was quite detailed and made no reference to any problems with interpretation or lack of an official interpreter. It was also the case, he said, that there was no witness statement from the Sponsor or from the person who had allegedly interpreted for him.
6. Mr Shoker replied that it was not disputed that the Sponsor was aged and quite frail and he could well have been accompanied by someone else at the hearing. If somebody else had interpreted that person would not have been able to give evidence. If the correct interpreter was not there it made the whole decision unsafe. He had nothing else to add. At that stage he asked whether he could have more time and sought an adjournment. I enquired how long his firm had been on the record. I

noted that it was they who had filed the Notice of Appeal in August of the previous year. I was of the view that there had been more than adequate time to obtain statements from the Sponsor and from any person who had allegedly interpreted for him and to lodge them with the Tribunal in support of the appeal. Although it was regrettable that the Sponsor was currently in hospital this was an error of law hearing and oral evidence would not normally be required. Sufficient time had been available for the case to be prepared and at this late stage adjournment was not required or warranted. There were no further submissions.

7. The burden is upon the Appellant to make out the allegation of procedural irregularity. All I had before me was a bare assertion to this effect made by solicitors on behalf of the Sponsor. I had no witness statement from the Sponsor nor any witness statement from the alleged community interpreter. I noted from the Record of Proceedings that it was recorded that an official interpreter from Applied Language Solutions had been secured for the hearing. The judge's determination is detailed and makes no reference to any difficulties concerning the services of an interpreter. At paragraph 4 the judge recites "The Sponsor attended and gave evidence through the interpreter." The implication from that sentence is that it was an official interpreter who carried out the interpretation. The judge's Record of Proceedings makes no reference to any lack of official interpreter or decision as to an unofficial interpreter being, most unusually, allowed to interpret. On that basis I was satisfied that the Appellant had not made out the allegation. It is clear from, amongst other sources, the reported case of **Azia (proof of misconduct by judge) Iraq [2012] UKUT 96 (IAC)** that where there are allegations that a judge has not acted properly in conducting a hearing proof is required. There was simply no such proof before me and all the indications were that the hearing had been conducted in proper form. In reaching that decision I did not rely upon Mr Smart's information as to the minute from the Presenting Officer at the original hearing but in passing I note that he had nothing to say which might have made me consider that there had been any impropriety in the way the hearing was conducted. The allegation is not made out and accordingly this appeal is dismissed.

### **Notice of Decision**

There was no material error of law in the original decision and this appeal is dismissed.

There was no application for an anonymity order and none is made.

Signed

Date 28 September 2015

