



IAC-FH-NL-V1

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

Appeal Number: OA/02883/2014

THE IMMIGRATION ACTS

Heard at Field House

On 31 March 2016

**Decision &
Promulgated
On 19 April 2016**

Reasons

Before

**Mr H J E LATTER
DEPUTY UPPER TRIBUNAL JUDGE**

Between

**ENTRY CLEARANCE OFFICER
FOR THE BRITISH CONSULATE GENERAL IN PARIS**

Appellant

and

**LOUIZA KRIBEL-HAFSI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr P Paraskos, Counsel

DECISION AND REASONS

1. This is an appeal by the Entry Clearance Officer against a decision of the First-tier Tribunal (Judge Oakley) allowing an appeal under the Immigration Rules against the respondent's decision made on 21 January 2014 refusing the applicant entry clearance as a spouse under Appendix FM. In this

decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Entry Clearance Officer as the respondent.

Background

2. The appellant is a citizen of Algeria born on 27 December 1986. Her husband, the sponsor, is a UK citizen who was previously married in the UK but that marriage failed and he was divorced on 18 June 2012. In his witness statement dated 13 August 2015 he said that after recovering from his divorce he thought about his future and shared his feelings and wishes with his family in Algeria. His sister knew the appellant and arrangements were made for them to be introduced in March 2013 in Algeria. They entered into a marriage under Algerian law on 2 April 2013. He then returned to the UK but in line with Algerian customs there were separate wedding celebrations to announce their marriage to friends and families, for the appellant on 12 June 2013 and for him on 8 October 2013. They lived together until 26 November 2013 when the sponsor had to return to the UK
3. The appellant applied for entry clearance as a spouse on 7 November 2013. The application was refused on 21 January 2014 as the respondent was not satisfied that the relationship with the sponsor was genuine and subsisting or that they intended to live together permanently. It was his finding that the appellant had entered into this marriage in order to facilitate her entry clearance to the UK. The decision is set out on a standard form, GV51(FRA). It is divided into four sections: suitability - entry clearance requirements, eligibility for entry clearance as a partner, financial requirements, and English language requirement. The respondent's reasons for refusal are set out under eligibility for entry clearance as a partner and in relation to the other three requirements the reasons are simply given as "not applicable".
4. The appellant filed a notice of appeal. The application was reviewed by an Entry Clearance Manager who maintained the decision. The appeal therefore proceeded to a hearing before the First-tier Tribunal.

The Hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal the judge said that the basis of the decision was in relation to whether the marriage was genuine and subsisting [3]. He heard oral evidence from the sponsor and a friend of the sponsor and he also had documentary evidence set out in bundles submitted by both the appellant and the respondent [5]. The judge found the sponsor to be an entirely credible witness. He accepted that this was an arranged marriage and that the relationship, albeit of a short duration, was one where both the appellant and the sponsor "clicked" and he found that the marriage was genuine and subsisting.

6. So far as the issues relating to finance and English language ability are concerned, the judge said at [20]:

“20. The appellant had submitted with the application details of her English language qualification as well as full details of the financial requirements. It was noted from the decision that had been made by the respondent that neither of these issues were in contention as the relevant part of the decision concerning financial requirements of the English language requirement had been marked as ‘not applicable’. Clearly therefore they had been considered by the respondent otherwise there would have been a relevant completion of that part of the decision and the fact that it is stated that it was not applicable. It therefore has to be assumed that the question of English language and financial requirements have been met.”

and at [26]:

“26. Clearly from the decision given that all details of financial requirements and English language requirements have been submitted the Respondent has not considered these to be applicable in terms of the decision and from that I must assume that the Respondent is therefore satisfied on these matters.”

On this basis the judge said at [27] that the respondent’s decision was not in accordance with the law and the applicable immigration rules and the appeal was allowed.

The Grounds and Submissions

7. In the respondent’s grounds it is argued that the judge erred in law in that he wrongly assumed that the decision indicated that the respondent was satisfied on the financial requirements and the English language requirements of the rules. The respondent’s clear statement that no decision had been taken on aspects of the application was incapable of amounting to a concession that those aspects met the requirement of the Immigration Rules. It followed that a lawful decision was awaited on material aspects of the application and the only option properly open to the judge would have been to remit the matter back to the respondent for reconsideration.
8. Permission to appeal was granted by the Upper Tribunal on the basis that it was arguable the judge erred in law in assuming that the financial and English language requirements were met and that he had erred by failing to consider whether they were in fact met.
9. At the hearing before me Mr Clarke adopted his grounds arguing that the evidence indicated that the respondent had not made any decision on the financial or English language requirements of the rule and that could not be inferred from the use of the phraseology “not applicable”.

10. Mr Paraskos submitted that the judge did not err in law or, if there was any error, it was of no practical significance based on the evidence before him. He argued that the respondent had made a decision on issues relating to the financial and English language requirements and on suitability for entry clearance. He had entered “not applicable” under the box headed “ECO’s reasons for refusal”. If there were no reasons for refusal, it must follow, so he argued, that it was accepted that those requirements had been met. The judge had commented at [20] that the appellant had submitted with the application details of her English language qualifications and there were full details of the financial requirements. In Mr Paraskos’ skeleton argument at [14] it is argued that the judge proceeded on the basis of the information before him and was entitled to do so.
11. At [15] of the skeleton argument it is accepted that it might have been unfortunate for the judge to have used the word “assumed” at [20] and [26] of his decision but as he had the bundle of documents submitted to the respondent, he was entitled to and did make a decision on those matters where on the face of it the core contested issue was the relationship requirement.
12. It was further argued that the appellant had paid her fee in good faith and could reasonably expect that a decision would be made on all aspects of her application. Mr Paraskos submitted that as a matter of policy the Upper Tribunal should be slow to endorse a position where there was a part decision by the respondent compelling the Tribunal to undertake and complete the respondent’s task through the appeal process or otherwise proliferate litigation “through pigeon step decision-making”, as he described it.

Consideration of whether there is an Error of Law

13. The issue at the heart of this appeal is whether the judge was entitled to assume that the respondent had accepted that the financial and English language requirements of the rules had been met. I am not satisfied that he was entitled to infer this from the way the notice of decision (GV51(FRA)) was completed. The reasons why the respondent found that the appellant could not meet the eligibility requirements as a partner are set out in the appropriate part of the form. The fact that “not applicable” has been entered in relation to the three other requirements identified does not without more indicate that the respondent accepted that those requirements were met. In order to obtain entry clearance as a partner the appellant must meet all the requirements of s.E-ECP, eligibility for entry clearance as a partner. The respondent found that the appellant could not meet the relationship requirements and I am satisfied that the respondent was entitled to refuse the application on that basis alone. There may well be cases where it is appropriate to deal in the alternative with all the other requirements of the rules but a decision based on a failure to meet one requirement of the rules does not in itself give rise to

an inference that the respondent was satisfied on the other aspects of the rules.

14. I am not satisfied that such an inference can be drawn from the use of the phrase “not applicable” as used on the notice of decision. Both the initial decision and the Entry Clearance Manger’s review focused solely on whether the relationship requirements of the rules were met. Having decided that they were not, the other requirements of the rules were not on the face of the decisions dealt with. I am not satisfied that it can be assumed or inferred in the absence of a clear concession that the other requirements were met. There is nothing to indicate from the judge’s decision that any concession was made at the hearing and I am not satisfied there is any adequate basis either in the respondent’s decision or from what happened at the hearing that the respondent had accepted that the requirements relating to finances or English language were met.
15. Both parties referred to the Tribunal determination in Sabir (Appendix FM – EX.1 not freestanding) [2014] UKUT 0063 and in particular [9] where UTJ Coker said:

“9. In order to establish whether the claimant meets the requirements of Appendix FM it is necessary to proceed through the Rules in a consecutive manner. If the claimant fails to meet a particular requirement of the Rules in that process, then she fails to meet the criteria in Appendix FM and thus her application under the Rules fails. “

This decision was primarily concerned with whether para EX.1 was a freestanding provision of the rules or whether it was only available to those who had successfully navigated their way through one of the alternative routes through R-LTRP. Mr Paraskos also relied on Pankina [2010] EWCA Civ 719 and the fact that the rules were to be treated as law by the Tribunal. However, I am not satisfied that either authority casts any light on the issue in the present appeal.

16. I am satisfied that the judge erred in law by assuming that the respondent accepted that the other requirements of the rules were met. Mr Clarke submitted that the proper course was for the appeal to be remitted to the respondent to decide those issues whereas Mr Paraskos submitted that if there was an error of law, the matter should go back to the First-tier Tribunal to resolve those issues. I am satisfied that remittal to the First-tier Tribunal is the proper course and meets at least in part the argument that a failure by the respondent to deal with all the matters and issues might proliferate litigation through sequential decision-making. The documents the appellant sought to rely on were in the bundle before the First-tier Tribunal. It was also clear that Mr Clarke and Mr Paraskos disagreed on whether these indicated that the appellant could in fact meet the other requirements of the rules. It was open to the judge to resolve these issues and I am satisfied that the proper course is for the appeal to be remitted to Judge Oakley for him to re-open the hearing and make findings on the outstanding issues.

Decision

17. For the reasons I have given I am satisfied that the judge erred in law. His decision is set aside in so far as it relates to the finance and language requirements of the rules. I remit the appeal to him to make a decision on those issues.

Signed

Date: 13 April 2016

H J E Latter

H J E Latter

Deputy Judge of the Upper Tribunal