



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

Appeal Number: OA/07448/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 24<sup>th</sup> January 2017**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MRS. BARDEES ABDULKADER ABDULHAFITH ALSHAMERY  
(ANONYMITY DIRECTION NOT MADE)**

**and**

**ENTRY CLEARANCE OFFICE - ABU DHABI**

**Appellant**

**Respondent**

**Representation:**

For the Appellants: Ms. S Alban, Sultan Lloyd Solicitors

For the Respondent: Mr. D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Lloyd promulgated on 9<sup>th</sup> March 2016. The underlying decision that was the subject of the appeal before the First-tier Tribunal ("FtT") was the decision of the respondent dated 9<sup>th</sup> April 2015 to refuse the appellant entry clearance to the UK. The decision

of the Entry Clearance Officer (“ECO”) was maintained following a review by the Entry Clearance Manager on 21<sup>st</sup> June 2015.

2. On 30<sup>th</sup> November 2014, the appellant made an on-line application for entry clearance as a partner under Appendix FM of the Immigration Rules. Her sponsor was Mr. Abdulnoor Abdulrahman Qaid, a British Citizen. In her on-line application, the appellant stated that her fiancée was in the UK and they were planning to get married on 12<sup>th</sup> December 2014 before the interview appointment. An interview was arranged for 19<sup>th</sup> January 2015 in Dubai. The appellant married Mr AAbdulnoor Qaid on 9<sup>th</sup> December 2014. The appellant completed an Appendix 2 (VAF 4A) form in which she confirmed that she had first met her sponsor in February 2004 and that their relationship began in February 2004. She also confirmed on that form, that she had married on 9<sup>th</sup> December 2014 in Yemen and that she keeps in touch with her sponsor by phone, Viber and WhatsApp. She confirmed that she had been living with her husband since they got married
3. The ECO was satisfied that the appellant was married, but was not satisfied that the relationship between the appellant and her partner was genuine and subsisting. Similarly, the ECO was not satisfied that the appellant and her partner intended to live together permanently in the UK. The application for entry clearance as a partner was therefore refused because the ECO was not satisfied that the appellant met all the requirements of Section E-ECP of Appendix FM of the Immigration Rules. The ECO was not satisfied that the requirements of E-ECP.2.6 and 2.10 were met.
4. The decision of the ECO to refuse entry clearance was maintained following a review by the Entry Clearance Manager, after considering all the supporting documents provided, the information as declared on the application form, the refusal notice and the grounds for appeal.
5. The decision of the FtT Judge sets out the background to the appeal and the proceedings before him at paragraphs [1] to [3] of the decision. At paragraphs [4]

to [5] of the decision, the Judge sets out the appellant's claim and at paragraphs [6] to [9] the Judge refers to the respondent's reasons for refusing the application. The Judge's findings and reasons for dismissing the appeal are to be found at paragraphs [15] to [25] of his decision. There are several reasons given by the Judge for his conclusion, at [23], that the evidence presented to him did not persuade him on balance, that the relationship is genuine or subsisting, or that the couple genuinely intend to live together in the UK. Having reached that conclusion, the Judge found, at [25], that the right to family life under Article 8 is not engaged and there were no other reasons before him to "go outside' the rules.

6. The appellant's grounds of appeal identify several areas in which the appellant contends, the Judge erred in his assessment of the evidence before him. Permission to appeal was granted by FfT Judge Campbell on 19<sup>th</sup> August 2016. FfT Judge Campbell noted that the transcripts recording electronic communication between the appellant and her sponsor did contain messages in English and included the appellant's telephone number and the date of each communication. It is therefore arguable that the Judge erred in attaching no weight at all, to that evidence. Similarly, it is arguable that the Judge erred in finding that there was no evidence of the wedding, when a video of the event was available to be viewed at the hearing. Permission to appeal was granted on all grounds. The matter comes before me to consider whether the decision of the First-tier Tribunal involved the making of a material error of law, and if so, to remake the decision.
7. The respondent has filed a rule 24 response dated 5<sup>th</sup> September 2015. The respondent opposes the appeal and contends that the Judge has given ample reasons why this appeal was dismissed. The respondent contends that any error in the assessment of a small number of transcripts recording electronic communication in English, between the appellant and her sponsor, does not amount to a material error of law capable of affecting the outcome of the appeal.

## Discussion

8. The appellant seeks to appeal findings made by the FtT Judge, who had the opportunity of hearing the evidence of the appellant's sponsor, albeit, the appellant was unrepresented. The issue for me to decide is whether the Judge was entitled to make the findings that he did on the evidence before him, and to conclude that on balance, the relationship between the appellant and sponsor is not genuine or subsisting, and that the couple do not genuinely intend to live together in the UK.
9. In that respect, I follow the guidance of the Court of Appeal in R & ors (Iran) v SSHD [2005] EWCA Civ 982. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the Wednesbury sense, and findings of fact that are wholly unsupported by the evidence. I remind myself that on appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when he was making material findings. I apply that guidance to my consideration of the decision in this appeal.
10. I have also had regard to the decision of the Upper Tribunal in Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC where it was stated in the head note that:

*"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*
11. The Judge found, at [15], that he could not attach any weight to the evidence relied upon by the appellant of electronic communication between the appellant and her husband because the communication is in Arabic, and no translation had been provided. Ms Alban submits the Judge erred in failing to give any weight to the

electronic communications between the appellant and sponsor. She advances two reasons. First, some of the messages are in English and therefore do not require translation. Second, the appellant's phone number, and the date of the communication are clearly visible in English on the copies relied upon. She submits the appellant's phone number is recorded in the application for Entry Clearance and although the content of all the communications has not been translated, the evidence produced clearly demonstrates continued communication between the appellant and the sponsor.

12. Mr Mills accepts that there were some communications between the appellant and her sponsor that were in English, but they were very limited. He submits, that the Judge records at paragraph [3] of his decision that he has taken careful account of all the documents before him, including some text messages provided on the day of the hearing. Mr Mills accepts that the Judge erred in concluding that he could not attach any weight to that evidence, but submits that any error in the Judge's approach to that evidence is immaterial. He submits it is impossible to establish from the very limited transcripts relied upon by the appellant, the year in which those communications took place and whether the messages pre-date or post-date the decision under appeal.
13. I have carefully considered the transcripts of the messages that were before the FfT and those that the sponsor handed to the Judge at the hearing. The transcripts that were before the Judge in the respondent's bundle demonstrate intermittent communication between 26<sup>th</sup> February 2014 to 31<sup>st</sup> December 2014. There is evidence of some communication in English on Sunday 10<sup>th</sup> January, and Wednesday 13<sup>th</sup> January, in the transcripts that the sponsor handed to the Judge at the hearing. The year is not, as Mr Mills submits, identified, but they can only relate to 2016 (*10<sup>th</sup> January 2016 fell on a Sunday*) and so that communication plainly post-dates the decision under appeal.
14. In my judgment, although the Judge erred in stating that he attached no weight to the evidence of electronic communications, any error is immaterial and not capable

of affecting the outcome of the appeal. The Judge did not reach the conclusion that the electronic communication was not between the appellant and the sponsor. Rather, the Judge found that he could not attach any weight to the electronic communication because it is in Arabic and no translation had been provided.

15. The only evidence of electronic communication between the appellant and her sponsor that pre-dated the decision under appeal was that which is all in Arabic, and was untranslated. The only evidence of communication in English was the communications on Sunday 10<sup>th</sup> January, and Wednesday 13<sup>th</sup> January 2016. In the absence of any translation of the other conversations, the Judge could not in any event have attached any significant weight to the evidence that would be sufficient to establish that the relationship between the appellant and the sponsor is genuine or subsisting, or that the couple genuinely intend to live together in the UK. In any event, the Judge gave a number of other reasons for his conclusion that on balance, the relationship between the appellant and sponsor is not genuine or subsisting, and that the couple do not genuinely intend to live together in the UK.
16. At paragraph [16] of his decision, the Judge states that he attaches little weight to two photographs that it was claimed, were of the appellant and the sponsor, because the copies provided were such that the Judge had little confidence in identifying the sponsor from the photos. Ms Alban submits the Judge erred in failing to give any weight to the photographs because the sponsor had the original photographs with him at the hearing, and if the Judge had concerns about the quality of the photographs and what they showed, that could have been resolved at the hearing. Mr Mills submits that the photographs could not carry much weight because as the Judge notes, there is no information as to where and when those photographs were taken. I reject the submission made by Ms Alban that the Judge erred in attaching no weight to the photographs. The Judge states at paragraph [16] that he was able to give little weight to the photographs. He does not say that he attaches no weight to the photographs. The Judge gives two reasons for attaching little weight to them. First, he had little confidence in identifying the sponsor from

the pictures, and second, there was nothing in the pictures which gave any clue as to when or when they were taken. In my judgement, it was open to the Judge to attach little weight to the photographs, for the reasons he has given.

17. The appellant also contends that the Judge erred at paragraph [17] of the decision, in his assessment of the appellant's wedding and his surprise at the lack of photographs of the wedding in the evidence before him. Ms Alban submits the photographs had been submitted in support of the application for entry clearance and in any event, the marriage was not in issue. In my judgement, it is clear from a careful reading of paragraph [17] of the decision that although the Judge expresses some surprise at there being no evidence, such as photographs of the wedding in the documents before him, he does not weigh the absence of that evidence against the appellant. The Judge noted at paragraph [6] that the respondent had accepted that the appellant and sponsor were married and he notes at paragraph [17] that the respondent had mentioned in the refusal that a photograph of the wedding had been seen.
18. The appellant contends that the Judge misunderstood the sponsor's evidence as to their plans for when the appellant arrives in the UK at paragraph [20], and at paragraph [22] of his decision, as to why the appellant cannot travel to Dubai to meet his there. Ms Alban submits it is unfair to say that no thought or discussion had taken place about what the appellant intended to do in the UK and that the appellant could not travel to Dubai because of the war that had broken out in Yemen. Mr Mills submits the observations made by the Judge upon the evidence are accurate, and were properly open to the Judge on the evidence.
19. I reject the submissions made by Ms Alban on behalf of the appellant. The Judge had the advantage of hearing the evidence of the sponsor and making his own assessment of the evidence. The Judge notes that when asked about their plans for when the appellant arrives in the UK, the sponsor vaguely stated "she can do whatever she wants". That is not a misunderstanding of the evidence, but an observation that the Judge was entitled to make about the evidence before him.

Similarly, at paragraph [22] the Judge notes that the sponsor says that his wife cannot travel to Dubai to meet him there, but was not clear about why. If, as Ms Alban submits, the appellant could not travel to Dubai because of the war that had broken out in Yemen, it was open to the sponsor to provide that explanation to the Judge, but he does not appear to have done so. In my judgement, it was open to the Judge to make the observations that he does at paragraphs [20] and [22] of his decision as to the evidence given by the sponsor when he was assessing whether he could be satisfied on balance, that the relationship between the appellant and sponsor is genuine and subsisting, and that the couple do genuinely intend to live together in the UK.

20. Although the appellant contends that the Judge erred at paragraph [21] of the decision in failing to attribute any weight to the travel document relied upon by the appellant, Ms Alban conceded before me that the travel documents were, as the Judge correctly notes, untranslated.
21. Ms Alban also submits the Judge erred in failing to adjourn the hearing before him to allow the appellant an opportunity to translate the untranslated documents into English. She submits that the appellant was unrepresented and as the Judge considered the documents to be critical, he should have adjourned the hearing. Ms Alban concedes before me that there was no application for an adjournment made by or on behalf of the appellant. The burden was plainly upon the appellant to establish, on a balance of probabilities that the requirements of the immigration rules were met. The appellant was aware of the matters in issue. They had been identified in the decision of the ECO. In the absence of any application for an adjournment, I cannot see any basis upon which the Judge can be criticised for failing to adjourn the hearing.
22. I have carefully read the decision of the FfT Judge. I have carefully considered whether the Judge's decision read as a whole, discloses a material error of law. I have no reason to doubt that the Judge considered the evidence as a whole, in completing an individual and fact-specific inquiry as to the appellant's appeal. In

my judgement, the Judge properly considered the evidence before him and explained his reasons for his finding that on balance, the relationship between the appellant and sponsor is not genuine or subsisting, and that the couple do not genuinely intend to live together in the UK, in a way that the parties can understand why they have won or lost. In my judgment, the grounds of appeal relied upon by the appellant amount to a disagreement with findings that were open to the Judge, on the material before him.

23. Overall I am not satisfied that the Judge fell into material error of law capable of affecting the outcome of the appeal. In my judgment, upon a holistic reading of the decision, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him. I am satisfied that the Judge's decision is a sufficiently reasoned decision that was open to him on the evidence.
24. The appeal is dismissed.

**Notice of Decision**

25. The appeal is dismissed and the decision of the First-tier Tribunal shall stand.
26. No anonymity direction is made.

Signed

Date

1<sup>st</sup> March 2017

**Deputy Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and so there can be no fee award.

Signed

**Deputy Upper Tribunal Judge Mandalia**