



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/22185/2016  
HU/22171/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 August 2018

Decision & Reasons Promulgated  
On 29 August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

TAGWA [H]  
[R E]  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr A Seelhoff (A. Seelhoff, Solicitors)

For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellants who are the wife and child of the UK Sponsor. They had sought entry to the UK on that basis and the application

was refused by an Entry Clearance Officer for two reasons; one that the marriage was polygamous because at the time the Sponsor and the first Appellant married he was still married to his first wife and secondly on English language grounds. By the time the hearing came before the First-tier Tribunal on 25<sup>th</sup> November 2017 the Secretary of State had conceded the language point. The only issue therefore was the question of the polygamous marriage.

2. The Judge in a Decision and Reasons promulgated on 13<sup>th</sup> December 2017 dismissed the appeal on the basis that it was indeed a polygamous marriage. The Appellants argue that the Judge was in error in so finding because the Rules do not rule out entry for participants in polygamous marriages per se. Mr Melvin argued that they do and referred me to the Home Office Guidance on Polygamous or Potentially Polygamous Marriages SET14. He also argued that the first Appellant was not a spouse because the marriage was not valid under UK law.
3. The question however is not whether the marriage is valid under UK law but whether the marriage is valid in the country in which it was celebrated. It is the same test as proxy marriages and marriages that take place at an age that would be impermissible under UK law. If the marriage is valid in the country in which it was celebrated then it is recognised for the purpose of the Rules.
4. There is a policy, reflected in the Rules, that the UK will now allow polygamous relationships in the United Kingdom and that policy, as well as being set out in the Home Office Guidance, is contained in paragraph 278 of the Immigration Rules, which provides:

Nothing in these Rules should be construed as allowing a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as the spouse and civil partner of a man or woman (the Sponsor) if -

- (1) his or her marriage or civil partnership to the Sponsor is polygamous; and
- (2) there is another person living who is the husband or wife of the Sponsor; and who -
  - (a) is or at any time since his or her marriage or civil partnership to the Sponsor has been in the United Kingdom.

There is another section which is irrelevant for the purposes of this appeal.

5. The marriage is polygamous. It is accepted that it is polygamous because at the time it was celebrated the Sponsor had another wife. However, the other wife from whom he is now divorced, has never been in the United Kingdom and therefore paragraph 278 does not prevent the Appellants succeeding.
6. Mr Melvin sought to argue that the paragraph 278 should be read such that if the marriage is polygamous that in itself is enough. Clearly, that is not what the paragraph says. It is quite clear that the UK will only allow one spouse in a polygamous marriage

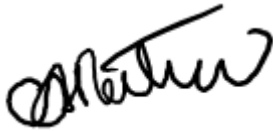
to enter the United Kingdom and that is what the application here was for. The Judge in failing to consider paragraph 278(2) made an error clearly material to the outcome and so the Decision is set aside.

7. It is accepted by Mr Melvin that that was the sole issue to be decided in this case and I re-decide the appeal and allow them on the basis that paragraph 278 does not apply in this case.

**Notice of Decision**

The appeal is allowed

No anonymity direction is made.



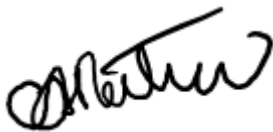
Signed

Date 20<sup>th</sup> August 2018

Upper Tribunal Judge Martin

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the appeals have succeeded on the basis of evidence not before the Entry Clearance Officer.



Signed

Date 20<sup>th</sup> August 2018

Upper Tribunal Judge Martin