



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/26508/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Birmingham
On: 22nd October 2017**

**Decision and Reasons
Promulgated
On: 04th January 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**DR TAREK MOHMAED ABDEL RAHEEM MOHAMMAD ALY
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Farhat, Gulbenkian Andonian Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Egypt date of birth 4th April 1977. He seeks leave to remain in the United Kingdom on human rights grounds, as the spouse of a British national present and settled in this country. It is accepted that Dr Aly meets all of the requirements of the relevant Rules save one: the question raised on appeal is whether he is in fact married to his sponsor.
2. Dr Aly made his application for leave to remain on the 12th September 2016. He asserted that he was married to a Ms Naomi Vanlint. He said

that he had been living with Ms Vanlint in a relationship akin to marriage since November 2015. As evidence of their marriage the couple presented a document issued by the Consulate General of the Arab Republic of Egypt on the 22nd August 2016. This stated that the marriage was registered in the Civil Register in Cairo on the 12th July 2016. In his application form [at 6.22] Dr Aly was asked “when and where did you marry or enter into a civil partnership?” to which he responded “Egyptian Consulate General, London on 15th June 2016. Certificate issued on the 12th July 2016 from Cairo Registry Office”. In answer to the next question, “What type of ceremony was your marriage or civil partnership?” Dr Aly wrote “Official/registry office”.

3. The Respondent refused the application by way of letter dated 15th November 2016. The sole reason given was that she did not accept that the marriage between Dr Aly and Ms Vanlint was valid. The key passage is at page 3 of 7:

“You have provided an original marriage certificate issued by the Consulate General of the Arab Republic of Egypt in London issued on the 12th July 2016 and an official translation. You have advised that both yourself and your partner, Naomi Vanlint, attended a ceremony at the Egyptian consulate in London on the 15th June 2016. The marriage was subsequently registered in Cairo on the 12th July 2016, without your attendance, and the certificate was sent to the London Embassy for your collection in August 2016”

Having summarised the facts thus, the decision maker goes on to cite an extract from the Immigration Directorates’ Instruction, Chapter 8, Annex FM 1.3: Recognition of Marriage and Divorce:

1.1. Marriage in a foreign embassy

A foreign embassy, high commission, consulate or other diplomatic premises in the United Kingdom are not regarded as being outside the United Kingdom because in the case of *RADWAN V RADWAN* (1972) ALL ER 967 it was found that a diplomatic premises forms part of the state in which it is situated. Since the Marriage Act of 1994 (which came into effect on 1 April 1995) it would be possible for an embassy to be listed as an approved building for a civil marriage in the United Kingdom.

1. MARRIAGE IN THE UNITED KINGDOM

All marriages which take place in the United Kingdom must,

in order to be recognised as valid, be monogamous and must be carried out in accordance with the requirements of the Marriage Act 1949, as amended by the Marriage Acts of 1970, 1983 and 1994, the Marriage Regulations of 1986 and other related Acts (eg the Children Act 1989).

A claim to be married in the United Kingdom must be supported by a marriage certificate (normal green style in all cases) issued by one of the following:

- * Superintendent Registrar;
- * Registrar;
- * Clergyman (of Church of England or Church in Wales);
- * Authorised person of a Nonconformist Church;
- * The General Register Office;
- * Secretary of Marriage for a Synagogue;
- * Registering Officer for the Society of Friends; and
- * in a building approved for civil marriages under the Marriage Act of 1994.

4. Having had regard to that guidance, the decision-maker considered that the principles in Radwan v Radwan applied and that the marriage certificate relied upon by Dr Aly was not capable of showing that he had contracted a marriage recognised as valid in the UK. He did not have a 'green' (ie UK) marriage certificate and the marriage that took place in the Egyptian embassy was not recognised under English law. The application was accordingly refused on the grounds that Dr Aly could not show himself to be a 'partner' as defined at GEN.1.2. of Appendix FM. He was not legally married and had not lived with Ms Vanlint as common law partners for more than two years at the date of application.
5. The First-tier Tribunal, which determined this appeal on the papers, agreed with the Respondent and the appeal was dismissed.

The Grounds

6. In grounds of appeal lodged on the 16th February 2017 Dr Aly sought to challenge the decision below on two grounds.
7. First, he submitted, both the Secretary of State and the First-tier Tribunal have misunderstood the *ratio decidendi* of Radwan v Radwan, which turned on the statutory interpretation of the Recognition of Divorces and Legal Separation Act 1971. The form of words used in that statute, relating to divorces, was materially different to the words used in the statutory provisions relating to marriage. In granting permission to appeal to this Tribunal, First-tier Tribunal Judge Froom described this ground as "flimsy", and so it has proved. Before me Mr Farhat submitted, in recognition of his duty of candour, the decision in Dukali v Lamrani (Attorney General

intervening) [2012] EWHC 1748 (Fam) which supports the Secretary of State's view that a marriage conducted in a Consulate in London would not be valid for the purpose of English law. Ground (i) was therefore withdrawn.

8. The second ground is that the determination is flawed for a material mistake of fact. It is submitted that both Secretary of State and First-tier Tribunal have misunderstood the factual matrix. The marriage did *not* take place in the Egyptian Consulate, as assumed by both. In fact it was a marriage conducted and registered in Egypt, valid under Egyptian law and as such the normal principles of *lex loci celebrationis* applied. Whatever happened at the Egyptian consulate when the parties attended there on the 15th June 2016, it was not a marriage. They were not considered married under Egyptian law until the 12th July 2016 until the marriage was registered in Cairo. This being the case the principles applied by the decision maker in her decision were not relevant. The only question was whether the marriage is valid in Egypt; it is, and the appeal should have been allowed.

Discussion and Findings

9. I find ground (ii) to be made out. Whilst Dr Aly's responses on the application form (cited above at para 2) might have left room for ambiguity, the documentary evidence before the First-tier Tribunal did not. The relevant documents were, in chronological order, as follows. I have highlighted the pertinent parts:
 - i) A "certificate of no impediment to marriage" issued by the Superintendent Registrar in the district of Leicestershire on the 7th April 2016. Mr Farhat submitted that this was obtained to reassure the Egyptian authorities that Ms Vanlint was free to marry. The relevant part is that the Superintendent Registrar records as the "**District and Country in which the marriage is to be solemnized**" as "**Marriage Registry Office, 4th Floor, Egyptian Ministry of Justice, Lazoughly Square, Abdeen, Cairo, Egypt**".
 - ii) A certificate issued on the 22nd August 2016 by the Consulate General which states that it is the English version of appended Arabic originals. The certificate reads: "**According to the Marriage Certificate issued in the Consulate General of the Arab Republic of Egypt in London on the 12/7/16 - No of files 6565 - registered in the Civil Register in Egypt under 2114 - authentication No 6 on 12/7/16** marriage has been proven between...[the parties]"
 - iii) A letter from the Consulate General to the Respondent's

department dated 23rd November 2016. This reads “Kindly be informed that all marriages processed at the Consulate General of the Arab Republic of Egypt are officially registered at the Civil Register of Egypt and are considered official marriages by the Government of the Arab Republic of Egypt. Dr Aly and Ms Vanlint **marriage was registered in Egypt on the 12/7/16, under registration No. 2114 and are considered legally married by the Egyptian government starting this date.**

- iv) An email from Nadia Latif, Executive Secretary at the Egyptian Consulate to Dr Aly dated 8th December 2016. Ms Latif writes “Kindly note that this email is confirmation that both you and Mrs Naomi Vanlint have attended the Consulate General of the Arab Republic of Egypt on Wednesday 15th June 2016 **to apply for marriage registration in Egypt. The marriage was registered in Egypt on 12th July 2016**”.

10. The certificate issued by the registrar in Leicester is of some, but limited, value. It is arguable that she wrote down what she was told, namely that the parties intended to solemnize their wedding in that office in Cairo. The second document, the certificate issued by the Consulate and relied upon by the Respondent at the date of decision, was arguably unclear, referring as it did to certificates being issued *and* registration. The crucial documents before the First-tier Tribunal were however the letter from the Consulate to the Home Office of the 23rd November 2016, and the email from Ms Latif to Dr Aly. The letter to the Home Office makes it absolutely clear that as far as the Egyptian authorities are concerned, the marriage occurred, and was considered valid under Egyptian law, *on the date that it was registered* as such in Cairo. As Mr Farhat puts it, the couple cannot have been ‘married’ under any ‘ceremony’ in the Consulate in June if the marriage did not occur as a matter of Egyptian law until the 12th July 2016. The couple did not leave the Consulate married. Ms Latif’s email confirms that to be the position, and offers some exposition as to what the purpose of the visit in June was: the couple attended the Consulate to *apply* to have their marriage registered in Egypt. I find nothing in the evidence to contradict Ms Latif’s description of that visit. In particular I am unable to find any evidence at all to support the Respondent’s construction – adopted by the First-tier Tribunal – that a “ceremony” took place that day.

11. Accordingly, I am satisfied that the decision of the First-tier Tribunal turned on a misapprehension of the facts. Contrary to the findings at paragraph 22 of the determination, the evidence did not show that the marriage took place at the Consulate on the 15th June 2016. The Consulate itself states that the marriage took place in Egypt on the 12th July 2016.

12. The Consulate further states that the marriage is considered valid as far as Egyptian law is concerned. Mr Farhat relied upon that evidence in support of his submission that Dr Aly does in fact meet the requirements of GEN.1.2 and invited me to allow the appeal. Mrs Aboni was without instructions. She had come to court prepared to argue ground (i) but had not been advised as to the Respondent's position on ground (ii). Now that I had found as fact that the marriage did take place in Egypt on the 12th July 2016 as claimed, she requested some time to take instructions as to the Respondent's position on its validity. In the interests of justice, and noting that this hearing was listed as an 'error of law' hearing only, I agreed to delay promulgation of my decision to allow the Respondent time to consider her position. I gave oral directions that the Respondent consider the material I have referred to herein, and my finding on the facts, and to advise in writing no later than 4pm on the 6th November 2017 whether she contests the evidence given by the Consulate about the validity of the marriage. By way of written directions sent out on the same day I indicated that if that evidence were to be contested, written submissions must explain why and be supported by relevant law/expert evidence¹.
13. No further submissions have been made by the Respondent and in those circumstances I am prepared to treat the evidence of the Egyptian consulate about the operation of the Egyptian Civil Code as determinative. The appeal is therefore allowed on the grounds that the marriage between Dr Aly and Ms Vanlint is in fact valid.

Decisions

14. The decision of the First-tier Tribunal contains a material error of law and it is set aside. I remake the decision by allowing the appeal.

Upper Tribunal Judge Bruce
7th November 2017

¹ I noted as an aside, although it formed no part of my decision, Mr Farhat's submission that the couple have, since the date of refusal, attempted marry according to English law. I am told that upon production of the documents summarised above they have been advised by the Registrar that they cannot be married twice: the Registrar being satisfied that the couple are married under the Egyptian civil code she is prevented from registering the marriage under our domestic law.