



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006273

First-tier Tribunal No: HU/54884/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 11 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MR AMINULLAKH NEMATULLAKH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Mr Gilbert, counsel instructed by Lighthouse Solicitors  
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**Heard at Field House on 4 April 2023**

**DECISION AND REASONS**

Introduction

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Adio heard on 27 September 2022.
2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge ID Boyes on 30 December 2022.

Anonymity

4. No anonymity direction was made previously, and there is no application nor apparent reason for one now.

Factual Background

5. The appellant is of Afghan origin and acquired citizenship of the Russian Federation. On 27 April 2021, he applied for entry clearance to the United Kingdom under Appendix FM to the Immigration Rules for leave to enter under paragraph EC-P.1.1 to join his British wife whom he married during 1993 in Afghanistan. The appellant also has three adult children who reside in the United Kingdom. That application was refused in a decision dated 26 July 2021 because the respondent did not accept that the claimed marriage was valid, with reference to E- ECP.2.7. of Appendix FM. The respondent also refused the application with reference to E- ECP.3.1 as it was not accepted that the funds available to the appellant were lawfully derived. Owing to the aforementioned concerns, the application was also refused under EC-P.1.1 (d). The respondent found there to be no exceptional circumstances which would render the refusal of the application to be a breach of Article 8 ECHR and accordingly further refused the application under D-ECP.1.3 of Appendix FM.

#### The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the judge was invited to depart from the decision of a previous judge who considered the appellant's earlier appeal against a refusal of a family visit visa. The judge concluded that the appellant's marriage was valid, that his funds were lawfully derived and that there were insurmountable obstacles to family life taking place in either Afghanistan or the Russian Federation. The appeal was allowed under Article 8 ECHR on the basis that the requirements of the Immigration Rules were met.

#### The grounds of appeal

7. The sole ground of appeal was that there was a failure to give adequate reasons. The grounds are set out in full below, the many typographical errors appearing in the notice of appeal.

The Tribunal found "Having found the Sponsor's marriage to be valid there are recent photographs of the family meeting up. All the children testify to this fact as well as the Sponsor. There are pictures supporting their evidence which includes visits to Dubai as well as Russia and recently a visit by the son Mohammed to Copenhagen to meet up with his father. I there has been deception on the part of the Appellant. This has put the Sponsor in a difficult position because the Appellant would have told lies to the Sponsor. However, it is quite clear that both the Sponsor and the children are willing to forgive their father, as rightly pointed out by Mr Briddock. The recent evidence shows that there is family life between them, albeit that they are adults. The evidence of conduct and reunification and the maintenance of that contact shows that the relationship between the Appellant and the Sponsor is genuine and subsisting. The Appellant has provided further evidence to show that his marriage to his second wife has ended. I am prepared to accept that the Appellant has admitted that that marriage was a sham marriage from the outset(16)". The Tribunal accepts deception has taken place but places weight on the evidence of the sponor who has previously been found to have told many lies in a previous determination. It is unclear why the Tribunal has chosen to depart from that finding. It is clear to the R that both the A and his sponsor have continually practiced lies and decpstion. There evidence was previoulsy not accepted and to depart from that finding

is incredible, there is no evidence to show that either of them can be relied upon to tell the truth. “. It is abundantly clear from the appellant's visa application history including applications made in Moscow in 2001 that the sponsor has told a pack of lies on arrival in the United Kingdom to the respondent about her claimed circumstances in Afghanistan which led her to claim asylum(15)” HU/00452/2016 Lying and deception to gain leave has featured for both the A and the sponsor since arriving in the UK. To depart from that finding and find a relationship is subsisting when relying on evidence from people who have shown a complete lack of regard for the immigration system is fundamentally flawed.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

3. The backdrop is said to be the continuous and multiple lies told by the appellant and the sponsor in relation to applications for leave. It is arguable that the Judge does not assimilate or clarify sufficiently why he is able to rely upon the evidence given that history.

4. Permission is granted as the grounds are arguable. I do not think that the grounds are the strongest ones and they will require some development in terms of the evidence, history and factual matrix but on the face of it, they are arguable.

9. The respondent did not file a Rule 24 response.

#### The hearing

10. Ms Everett stated that she had not seen the grant of permission until the morning of the error of law hearing. She stated that the difficulty she had with the grounds was that the application had not been refused under paragraph 320. As for the argument in the grounds that the judge did not deal with the previous judicial findings regarding the appellant's use of deception, Ms Everett said that they lacked merit, and she could not take them any further. Mr Gilbert then made succinct submissions. At the end of the hearing, I informed the parties that there was no material error of law in the decision of the First-tier Tribunal and that decision was upheld.

#### Decision on error of law

11. As a starting point, it is worth noting that the appellant's human rights application was not refused on suitability grounds as clearly stated in the decision letter. There were just two issues in contention for the judge to determine in assessing the appellant's human rights claim. Firstly, whether his marriage was valid and secondly, whether his funds were lawfully derived under Appendix FM-SE 1 (d). The grounds of appeal do not challenge the judge's findings at [17-18] on the second issue.

12. The sole concern raised in the grounds was that of the appellant's use of deception and the judge's approach to the previous decision of the First-tier Tribunal. Even the judge granting permission described these grounds as not being the strongest and indeed, while Ms Everett had no instructions to withdraw the appeal, she felt unable to make submissions in support of them.

She cannot be criticised for that approach. The grounds are poorly drafted and amount to little more than disagreement with the findings of the First-tier Tribunal.

13. Contrary to what is suggested in the grounds, the judge directed himself correctly as to the findings of the previous judge, applying *Devaseelan* from [12] onwards. The judge took the previous decision as a starting point and carefully considered whether he was able to depart from it, with reference to the relevant caselaw. The judge did not materially err in considering the new evidence before him which included a DNA report showing that the appellant was the father of his adult children with the sponsor, as well as a background country report and an expert report.
14. The expert evidence addressed the appellant's marriage certificate, which was authenticated by Dr Giustozzi, a well-known expert in this Tribunal. The judge did not decide the appeal based only on this expert report but after a detailed consideration of all the evidence which included a thorough assessment of the appellant's previous use of deception as well the judge's own concerns regarding the sponsor's credibility as to her knowledge of the appellant's subsequent sham marriage to a Russian national. The judge was entitled to find that notwithstanding the previous lies told by both the appellant and sponsor, their marriage was valid, and their relationship was both genuine and subsisting.
15. The decision of the First-tier Tribunal contains no material error of law and is upheld with all findings preserved.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is upheld.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**5 April 2023**

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### **NOTIFICATION OF APPEAL RIGHTS**

**1.** A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

**2.** Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

**3.** Where the person making the application is in detention under the Immigration Acts,

**the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

**4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).**

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email**