



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001267;
UI-2024-001268; UI-2024-001269;
UI-2024-001270; UI-2024-001271

First Tier No's:
HU/51030/2023, LH/00135/2024
HU/51032/2023, LH/00139/2024
HU/51033/2023, LH/00142/2024
HU/51035/2023, LH/00144/2024
HU/51038/2023, LH/00146/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 27 June 2024**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

Between

Entry Clearance Officer

Appellant

and

**RASHA ATEF AWAR ELHABIBY and others
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms Nolan, Senior Presenting Officer
For the Respondent: Mr Jesurum

Heard at Field House on 14 June 2024

DECISION AND REASONS

1. We shall refer to the appellant as 'the respondent' and to the respondents as 'the appellants' as they respectively appeared before the First-tier Tribunal. The appellants are citizens of Egypt. They appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer dated 19 December 2022 refusing them entry clearance to the United Kingdom on the basis of family life with the sponsor, Mr Tarek Rabie Elhusseiny Zahran (the sponsor). The First-tier Tribunal, in a decision

dated 9 February 2024, allowed the appeals. The Entry Clearance Officer now appeals to the Upper Tribunal.

2. The agreed factual matrix is set out by the judge at [10]. The second, third, fourth and fifth appellants are the children of the first appellant and sponsor. We shall refer to the first appellant hereafter as 'the appellant'.
3. The Entry Clearance Officer appeals on the ground that the First-tier Tribunal erred in law by making a material misdirection in law, in particular failing to acknowledge that polygamous marriages are not recognised in the law of England and Wales and by failing to apply paragraph 278 of the Immigration Rules.
4. Mr Jesurum, who appeared for the appellants before both Tribunals, submits that there is no dispute that polygamy is lawful in Egypt and that, on the assumption that the sponsor had the capacity to marry the appellant and was domiciled in Egypt, the marriage of appellant and sponsor was and remains valid in law. Only if it were to be proved that the appellant's domicile is England and Wales or elsewhere would the sponsor's second marriage to the appellant be invalid *ab initio* on account of the prohibition of polygamy under our domestic law. Ms Nolan, who appeared for the Entry Clearance Officer, did not seek to disagree with that proposition. Instead, she relied on the grounds of appeal and on the case of *Abdin (domicile - actually polygamous marriages)* [2012] UKUT 00309(IAC). The headnote of that case reads:

Whilst the Private International Law (Miscellaneous Provisions) Act 1995 amended section 11(d) of the Matrimonial Causes Act 1973 so that a potentially polygamous marriage would not be void if either party was at the time of the marriage domiciled in England and Wales, it did not alter the position regarding actually polygamous marriages. Under section 11(d) of the 1973 Act a polygamous marriage entered into outside England and Wales shall still be void if either party at the time of the marriage was domiciled in England and Wales.

5. Mr Jesurum further submits that the question of the appellant's domicile was not in dispute at the First-tier Tribunal hearing. In particular, he submitted that the Entry Clearance Officer had at no stage in the First-tier Tribunal proceedings asserted that the appellant's domicile of choice had changed from Egypt to England and Wales, notwithstanding the length of the appellant's residence here. He relies on two passages in the decision of the First-tier Tribunal to show that the only issue upon which the judge was asked to adjudicate was whether or not the appellant's first marriage had been validly terminated before the application which is the subject of these proceedings was made. First, at [6], the judge wrote:

‘it was agreed between the parties that the appeal hinged upon whether or not the earlier marriage ... had ended.’ Secondly at [13], the judge wrote: ‘The crux of the appeals relates to whether or not evidence has been provided to demonstrate that the sponsor is divorced from Ms Elisabetta Appoloni [the sponsor’s first wife].’

6. We agree with Mr Jesurum’s submissions. Whilst it would have been helpful if the judge had set out in greater detail the agreed position of the parties reached prior to the hearing before him, we are satisfied that it is tolerably clear from the decision that the Entry Clearance Officer did not challenge the validity of the appellant’s marriage to the sponsor on the ground that it was void because the sponsor was domiciled in England and Wales when that marriage had been contracted. The respondent’s position before the First-tier Tribunal was that the sponsor’s marriage to the appellant was not valid because the appellant had failed to prove that the first marriage had been validly dissolved. That was the only issue before the judge and it is manifestly clear that he was entitled on the evidence, which included a Decree Absolute pre-dating the application and decision and which the judge accepted as genuine, to find that the sponsor’s second marriage to the appellant was valid. The Entry Clearance Officer’s grounds of appeal are predicated on the assumption that the sponsor is domiciled in the United Kingdom. No such assumption pertained. Indeed, on the contrary, we find that the respondent accepted before the First-tier Tribunal that the sponsor remained domiciled in Egypt and that acceptance formed the basis of the agreement between the parties to which the judge refers at [6]. In our opinion, the judge’s analysis and decision would make no sense if that were not the case.
7. Accordingly, we dismiss the Entry Clearance Officer’s appeal.

Notice of Decision

The Entry Clearance Officer’s appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 14 June 2024