

IN THE FAMILY COURT AT EAST LONDON

6th and 7th Floor
11 Westferry Circus
London
E14 4HD

Date: 25 May 2022

Neutral Citation Number: [2022] EWFC 149

Before:

HER HONOUR JUDGE REARDON

[Sitting in open court]

Between:

**Mr A
- and -
Ms B**

Petitioner

Respondent

The applicant and respondent appeared as litigants in person.

Hearing dates: 23 – 25 May 2022

JUDGMENT

HER HONOUR JUDGE MADELEINE REARDON :

Introduction

1. This is my judgment following a final hearing in these proceedings which concern:
 - a. The applicant ('H')'s petition, issued on 28.5.20, for a decree of divorce;
 - b. The respondent ('W')'s application, deemed to have been made on 26.10.21, for a declaration of marital status, namely that the ceremony of marriage in which the parties participated on 16.5.08 did not constitute a valid marriage.
2. 'H' is the applicant, Mr A. 'W' is the respondent, Ms B. They are both Pakistani nationals with indefinite leave to remain in the UK.
3. The hearing took place as an attended hearing over three days. Both parties acted as litigants in person, as they have done throughout the majority of these proceedings. Each had the support of a McKenzie friend. W was assisted by an interpreter.

Background

4. The parties met in London in 2005. At that time H was living in Pakistan and W in the UK. Both had been married before. W married BC in 1998 and their son, L, was born in 1999. H married DE also in 1998. They have two sons, both now adults, and a daughter whose date of birth is in dispute but who was born between 2008 and 2010.
5. The status of those two marriages is very much in dispute between the parties.
6. On 16.5.08 the parties, who are both Christian, participated in a marriage ceremony conducted by a priest of the Associate Reformed Presbyterian Church in Sahiwal, Pakistan. Following the ceremony W returned to the UK and H remained in Pakistan.
7. On 10.3.10 H's application for a spousal visa was refused by an Entry Clearance Officer on the grounds, inter alia, that the officer was not satisfied that either party's previous marriage had been dissolved and that the parties were therefore free to marry. This decision was overturned by the First-Tier Tribunal on 8.12.10.
8. H came to the UK to join W in April 2011. They lived together in East London. In February 2012 their daughter, N, was born.
9. In 2015 the relationship ran into difficulties and the parties separated for a period of time before reconciling in 2017.
10. In March 2018 H was granted indefinite leave to remain.
11. In July 2018 the parties purchased a property together in Liverpool, although they did not live there.
12. In December 2018 the parties separated finally and H left the family home. H's divorce petition was issued on 28.5.20. On 5.7.20 W filed an answer in which she asserted that the marriage was 'not a recognized and registered marriage back home in Pakistan instead this marriage is based on fraud... the marriage was never exists' [sic].
13. On 10.12.20 W was given permission to file her answer out of time and the matter became a defended cause and was transferred to this court.
14. On 26.10.21 a first directions hearing took place before DDJ Wilkinson who re-allocated the case to circuit judge level.

Issues

15. On 6.1.22 the matter came before me for case management for the first time. I gave directions for the filing of evidence, including expert evidence, and listed the matter for a contested hearing.

16. I recorded the issues on the face of the order made on that occasion as follows:

“a. The petitioner (Mr A)’s case is that:

i. There was a valid marriage contracted between the parties in Pakistan on 16.5.08;

ii. Both parties were divorced when the marriage took place, and so the marriage is not void;

iii. He seeks a divorce on the ground that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

b. The respondent (Ms B)’s case is that:

i. The marriage ceremony in which both parties participated on 16.5.08 did not constitute a marriage in accordance with Pakistani law;

ii. Alternatively, if there was a marriage, it is void as both parties were married to other people when the marriage took place;

iii. She seeks a declaration of non-marriage under FLA 1986, s55. She does not wish to issue a petition for nullity as that is inconsistent with her primary position that there was no marriage.

17. In order to determine those issues I must answer the following questions:

(1) Did the ceremony on 16.5.08 constitute a legal marriage according to the law of the applicable jurisdiction (Pakistan)?

(2) Was the marriage void because either or both of the parties were married to another person at the time of the marriage?

(3) Assuming a marriage subsists which is capable of being dissolved by way of divorce, did the respondent behave in such a way that it would be unreasonable to expect the petitioner to live with her?

The law

Marriage or non-marriage?

18. The law draws a distinction between cases where a marriage (void or valid) subsists, and those where the ceremony which has taken place fails to create a marriage at all (a “non-marriage”).

19. A marriage will subsist if the ceremony which has taken place is sufficient to confer a change of status of the participants.

20. In *Hudson v Leigh* [2009] EWHC 1306 (Fam) Bodey J offered the following guidance:

'Questionable ceremonies should I think be addressed on a case by case basis, taking account of the various factors and features mentioned above including particularly, but not exhaustively:

- (a) whether the ceremony or event set out or purported to be a lawful marriage;
- (b) whether it bore all or enough of the hallmarks of marriage;
- (c) whether the three key participants (most especially the officiating official) believed, intended and understood the ceremony as giving rise to the status of lawful marriage [I was referring to lawful under English law]; and
- (d) the reasonable perceptions, understandings and beliefs of those in attendance.

In most if not all reasonably foreseeable situations, a review of these and similar considerations should enable a decision to be satisfactorily reached.'

- 21. According to the rules of private international law, the status of a marriage ceremony conducted overseas depends on the law of the state in which the ceremony takes place. Any issue as to the law of a foreign jurisdiction falls to be determined in this court, usually on the basis of expert evidence, as an issue of fact: see Dicey, Morris & Collins, *"The Conflict of Laws"*, rule 25(2).

The Matrimonial Causes Act 1973

- 22. Once it has been determined that a marriage exists, English law will apply to any remedy sought by either of the parties (for example, a decree of divorce or nullity): *Burns v Burns* [2007] EWHC 2492.
- 23. MCA 1973, s11 sets out the grounds on which a marriage is void:

11. A marriage celebrated after 31st July 1971 [...] shall be void on the following grounds only, that is to say—

- (a) that it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1986 (that is to say where—
 - (i) the parties are within the prohibited degrees of relationship;
 - (ii) either party is under the age of sixteen; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
- (b) that at the time of the marriage either party was already lawfully married or a civil partner;

- 24. MCA 1973, s1 sets out the grounds for divorce:

1 (1). Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably. (2)The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter

in this Act referred to as “two years’ separation”) and the respondent consents to a decree being granted;

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as “five years’ separation”).

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 5 below, grant a decree of divorce.

The fact-finding process

25. Where facts are in dispute the court must make findings. The burden of proving a fact in issue lies with the party making the allegation, and the standard of proof is the balance of probabilities: *Re B* [2008] UKHL 35.
26. Findings must be based on evidence and not on suspicion or speculation: *Re A* [2011] EWCA Civ 12. However common sense requires that the court should have regard to the inherent probability or improbability of an allegation: *Re B* (above.) The court must consider each piece of evidence in the context of the other evidence: *Re U, Re B* [2004] EWCA Civ 567.
27. Where it is demonstrated that a witness has lied, the court must bear in mind that witnesses lie for many reasons and just because a witness has lied about one thing does not mean they have lied about something else. Only if the Court is satisfied that there is no other reasonable explanation for the lie should it be treated as probative of a fact in issue: *R v Lucas* [2981] QB 720; *Re A, B and C* [2021] EWCA Civ 451.

Evidence

The expert evidence

28. On 6.1.22 I granted the parties permission to instruct an expert in Pakistani marriage law. My order set out the questions which were to be asked of the expert and provided that he or she should be given a copy of FPR 2010, Part 25 and Practice Direction 25B which sets out the court’s expectations of expert witnesses.
29. The parties complied with that direction. The expert instructed was Mr Riaz Anjum Masih, a Pakistani lawyer with 18 years’ experience in the Pakistan legal system and particular expertise in Christian family laws. The report was filed on 3.5.22 and on 16.5.22 Mr Anjum provided answers in writing to further written questions posed by W. At a pre-trial review on 3.5.22 I gave directions to enable the expert to give oral evidence by MS Teams.
30. It has not been possible to hear the expert’s oral evidence at this hearing. Over the course of the first and second day of the hearing my clerk made several attempts to join him by MS Teams or telephone but was unable to do so, although he was in contact with her by email. I was told by H that there was civil unrest in Lahore, where Mr Anjum is based, and that this may have been preventing him from reaching his office from where he had intended to give evidence.

31. I indicated to the parties that I did not consider it in the interests of justice to adjourn the hearing, given the delay already incurred and the uncertainty as to whether it would be possible to arrange for oral evidence to be heard at a future hearing. I invited the parties to address me in their submissions on the basis that the expert's unavailability to give oral evidence was a matter which I would be bound to take into account in evaluating his report.
32. W invited me to ignore the report altogether on the basis that it was unsigned. I reject that argument on the basis that I am satisfied the report which is contained in the bundle is the version sent directly by Mr Anjum to the parties and the court from his own email address. It is also clear from the email correspondence, which I have reviewed, that Mr Anjum has no personal connection with either party, was dealing with both at arms length, and was doing his best to provide an impartial response.
33. The report of Mr Anjum was primarily intended to provide the court with information about the legal framework applicable in Pakistan to a marriage ceremony performed by a Christian minister. In his report Mr Anjum sets out the relevant statutory provisions which are contained in the Christian Marriage Act 1872. He also helpfully provided a copy of the Act. Neither party suggested that Mr Anjum has not identified the relevant law, although both sought to interpret his conclusions in different ways.
34. I consider that I am able to rely on Mr Anjum's written evidence to the extent that it provides me with an accurate summary of the applicable law in Pakistan, which is in any event not substantially in dispute between the parties.
35. Although I had made it clear in the order dated 6.1.22 that the issue of whether either party was married to another person at the time of the ceremony on 16.5.08 was a factual issue for the court and not the expert to determine, it appears that Mr Anjum nevertheless approached what he describes in his report as 'the relevant courts' with a view to verifying the parties' previous divorces, and then included the outcome of his researches in his report.
36. I intend to disregard this part of Mr Anjum's evidence. It was not within the remit of the expert, as determined by the court, and the fact that Mr Anjum was not available for cross-examination means that it has not been possible to ask important and pertinent questions about the enquiries that he made, which are outlined only in the very briefest terms in the report. It would, in my judgement, create a real risk of unfairness were I to rely on this part of Mr Anjum's report in those circumstances.

The evidence of the parties

37. Neither party was a very satisfactory witness. As I shall explain, I have reached the conclusion that both have lied, in these or other proceedings, for the deliberate and specific purpose of gaining an advantage within litigation. In those circumstances I must treat their evidence with caution and must look where possible to external sources for corroboration.
38. W's case in these proceedings directly contradicts the evidence she gave to the immigration tribunal in 2010. In 2010 it was her case that she was divorced from her previous husband. In these proceedings her case is that they remain married.
39. It follows that W has lied in either these or the immigration proceedings. Her case is that she lied in the immigration proceedings, and is telling the truth now. She says that the reason she lied in 2010

was that she wanted to support H's visa application. She says also that she was under H's control, and suggests that he compelled or induced her to give a false statement.

40. Within the bundle, produced by H, is an unsigned copy of a witness statement in W's name which he says was prepared for her by solicitors representing her in 2010. The statement is clearly drafted by a solicitor: H and W both speak English but they are not fluent and it is not possible in my view that H could have written any part of it himself (as W at one point sought to suggest). Most importantly, the witness statement is entirely consistent with the judgment of the immigration Judge in the First-tier Tribunal, which summarises the oral and written evidence which W gave in those proceedings. I am satisfied that although the copy I have is unsigned, this document was prepared by W's then solicitors on her instructions and used in those proceedings.
41. I reject W's case that when she gave an account of the background in the immigration proceedings she was subjected to controlling behaviour by H. There is no credible evidence to support that account. Following the marriage H had remained in Pakistan for three years while waiting for his visa to be granted. W spent the majority of this period in the UK and so the parties were not physically in the same place, although they of course communicated. The bundle includes a considerable amount of evidence which sheds light on the relationship between the parties, including emails and messages passing between them. I am satisfied that certainly in 2010 W was not in fear of H, and that he was not behaving in a controlling manner towards her.
42. That means that W has either told a deliberate lie in the immigration proceedings, in order to support H's application for a visa, or she has told a deliberate lie in these proceedings, in order to defeat H's divorce petition. Whichever is correct, there are significant implications for W's credibility.
43. H has also lied. In 2020 in a narrative statement written for the police in Pakistan he said, 'after divorcing my first wife Ms BC, I have never had any contact with her'. In fact as H now accepts he spent considerable time with his first wife during a trip to Pakistan in 2019. In his oral evidence he sought to explain this discrepancy by telling me that by 'contact' in the 2020 statement he had meant physical contact. That answer was obviously absurd.
44. Within her evidence W has produced photographs and messages from H's first wife's facebook page around the time of the 2019 visit. H's first wife's profile picture is a photograph of her and H together. Her posts give the distinct impression of an existing matrimonial relationship. They include the message, 'love birds always stay blessed'. Various family members have posted comments including, 'looking so cute God bless you both' and 'Evergreen couple'. Someone using a profile picture of H and under his name has posted, 'May the days of our marriage life be joyous and rich... May we remain young at heart as we grow old together.'
45. H's case is that although he accepts that the printouts have been taken directly from his first wife's facebook page, the message purporting to come from him was written by some other, unknown person. Again I reject that explanation as absurd. I can think of no conceivable reason why anyone other than H would take the trouble to create a false profile and to post a message of that nature.
46. I am satisfied that H has lied about the facebook messages and about the status of his relationship with his first wife in 2019. I have considered whether H's embarrassment at having resumed contact with her might provide an alternative explanation for that lie, but on H's case the parties were separated by 2019 and there is no obvious reason why he should be reluctant to admit to having spent time or even reconciled with his first wife. I conclude that H's motivation for lying is that he is well aware that the status of his relationship with his first wife generally is an issue that directly

concerns this court, and he is attempting to present a false and misleading picture of that relationship.

The documentary evidence

47. The parties have between them produced a substantial quantity of documentation relevant to this and their previous marriages. This includes documents which purport to be copies of divorce decrees and marriage certificates, as well as affidavits, letters and statements in various forms purportedly prepared by those holding various official roles in Pakistan.
48. The documents produced by W and those produced by H directly contradict each other. For example, H has produced what he says is a copy of the parties' marriage certificate, together with a letter from the current priest at the church where they married which attests to its authenticity. W has produced a statement which she says was prepared by an elder of the church; this describes the certificate produced by H as 'fake' and says that there is no record of the marriage in the church register. There are many similar examples.
49. I have considered all of the documents carefully. Most have the appearance, at least, of authenticity. The parties have put forward a variety of arguments based on the features of a particular document, such as the comparison of signatures or the presence or absence of a stamp or attestation. None of these arguments was of any real assistance to me in establishing which, if any, of these documents are authentic. It is not realistically possible for the court to conduct an independent process of verification.
50. Given my conclusions as to the respective credibility of the parties, I do not consider that I can rely on the evidence of either of them in support of any conclusions as to the authenticity of the documents which they have produced.
51. The only course open to me in these circumstances is to treat the documentary evidence produced by the parties with extreme caution. I have not disregarded this evidence in its entirety and intend to set out in my analysis of the evidence the conclusions which I have determined it is safe to draw. On the whole, however, I considered this evidence to be profoundly unreliable.
52. Both parties referred from time to time to the online records held by the National Database and Registration Authority or NADRA, which I understand is a government department in Pakistan which holds details of individuals and family relationships. There does not appear to be a dispute between the parties about the data currently held on the NADRA database about each of them, but I have significant concerns about the accuracy of its content. The evidence suggests that the database depends on information provided by individuals and it does not appear that this information is independently verified: for example, as I explain below, both parties agreed that it is possible and quite common for families to choose to register their children on the NADRA database with incorrect dates of birth. It follows that I cannot look to this source for accurate and reliable information about the parties' respective marital status.
53. There are other categories of document in the bundle as to whose accuracy I can be more confident. For example, I am satisfied that the judgment of the First-tier Tribunal in December 2010 is the full and correct version. The parties have produced some documents from Children Act proceedings relating to N which I also consider are likely to be authentic, albeit of limited relevance to the issues at this hearing. Finally, both H and W agree that the series of photographs and posts from H's first wife's Facebook page are accurately reproduced in the bundle, and I accept that.

Analysis

The ceremony in which the parties took part on 16.5.08

54. There is no dispute that:
- a. a ceremony took place on 16.5.08;
 - b. it was performed by a priest of the Associate Reformed Presbyterian Church in Sahiwal and took place in W's sister's home.
55. W's case is that this ceremony did not constitute a valid marriage. She says that:
- a. H knew that he was not divorced and could not legally marry. He colluded with the priest to conduct a sham ceremony for the purposes of an immigration fraud;
 - b. The priest who conducted the ceremony knew that it was not a true marriage ceremony but a sham;
 - c. W herself believed she was entering into a valid marriage, despite (as is now her case) knowing she was not divorced from her first husband.
56. H relies on what he says is an 'attested' copy of the original marriage certificate, the original having been lost. I note that on 28.4.20 DDJ Butler gave H formal permission to rely on this document in place of a certified copy, but that permission of course does not amount to a finding that the document is authentic and it is necessary for me to review all of the evidence.
57. In support of her case W alleges that the original marriage certificate was never preserved in the church records. She says that the marriage certificate produced by H in these proceedings is a forgery created by him in 2010 for the immigration proceedings. W relies on various documentation including what she says is a copy of an entry in the church's marriage register, obtained by an agent instructed by her in Pakistan, which shows the names of a different couple under the same number (24) as appears on the marriage certificate H has produced. I have already made some observations about the risks in this case of relying on documentation produced by the parties. In this instance I have particular doubts about the authenticity of W's document because the top of the paper has been folded over in such a way as to obscure both the year and the serial number.
58. The evidence of Mr Anjum, which is not substantially disputed, is that a marriage will be recognised in Pakistan if it is solemnized in accordance with ss4 and 5 of the Christian Marriage Act 1872. Section 4 of the Act reads:
4. Marriages to be solemnized according to Act. Every marriage between persons, one or both of whom is [or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.
59. Section 5 reads, so far as is relevant for present purposes:
5. Persons by whom marriages may be solemnized. Marriages may be solemnized in Pakistan:
 - (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister.'

60. According to Mr Anjum, s77 of the same Act provides that when a marriage has been solemnized in accordance with the provisions of ss4 and 5, it shall not be void merely on account of any irregularity in respect of procedural matters including (at ss2) the notice of the marriage and (at ss3) the certificate or translation thereof.
61. I have considered the questions posed by Bodey J in *Hudson v Leigh*. It is accepted that a ceremony took place on 16.5.08 and that this was conducted by a priest with the requisite qualifications under s5 CMA 1872. The ceremony clearly purported to be, and bore all the hallmarks of, a lawful marriage.
62. For the reasons I have given, I place no reliance on any of the supporting documentation produced by the parties (including the marriage certificate produced by H, and the letter from the Church elder produced by W).
63. In my view, the burden lies squarely on W to prove that the priest conducting the ceremony did not intend it to bring about a lawful marriage. There is no credible evidence to support that assertion.
64. Bodey J's observations about the intentions of the participants fall to be considered in the context of W's assertion that both she and H were married to other people at the time of the marriage, and that each was aware, at the very least, of their own marital status. In my judgement, these observations cannot be taken to mean that in such a scenario the ceremony would amount to a "non-marriage". If that were the case, almost all marriages that are void by reason of a previous marriage would fall to be treated as non-marriages. I am satisfied that that is not a correct reading of the statute and relevant authorities.
65. I find that the ceremony which took place on 16.5.08 constituted a marriage between these two parties in accordance with the relevant law. This determination is not affected by any decision I may subsequently reach as to the parties' marital status at the time of the marriage.

The status of H's first marriage

66. H has produced a document which purports to be a decree of divorce evidencing the dissolution of his first marriage on 15.1.08.
67. W has produced a document dated 2.12.19 which purports to be a letter from the Senior Civil Judge in Lahore which states, in essence, that the divorce decree produced by H is not verified as genuine.
68. Again, I am not able to determine which of these documents, if either, is genuine. I acknowledge that the divorce certificate was accepted as authentic by the immigration tribunal in 2010. I am, however, not bound by that determination: see the rule in *Hollington v Hewthorn [1943] 1 KB 587*. It is clear from the judgment that the evidence available to the Tribunal, for obvious reasons, was far less extensive (and more one-sided) than the evidence available to me.
69. H's oral evidence about the circumstances of his divorce was vague and unconvincing. He was initially unable to explain the grounds of his divorce. On it being pointed out to him that Mr Anjum's report suggested that the only ground for divorce of a wife by a husband in Pakistan is adultery, he alleged that she had committed adultery. He then modified that by saying that he had not seen anything himself but had 'heard a lot of stories'. He was initially very reluctant to give the name of the person with whom he alleged that his wife had committed adultery. When it was pointed out to him that, according to Mr Anjum's report, the Divorce Act 1869 requires an alleged adulterer to be named as co-respondent to a divorce petition, he had no explanation for why no person was named.

70. The wording of the divorce decree produced by H suggests that it was obtained without H's first wife's active participation in the divorce process. Mr Anjum was not asked to answer the question of whether it is possible in Pakistan to obtain a divorce if the other party has not been served with notice of the proceedings, and although this seems unlikely I have resisted the temptation to speculate. However, the absence of any evidence that H's first wife was aware that she had been divorced is, in my view, a further factor undermining H's case.
71. H's wife gave birth to their third child in July of either 2008 (per H), 2009 (per W) or 2010 (per the NADRA records). My initial assumption was that the 2010 date was correct, given the official NADRA records and the fact that this is also the date given by H in his C100 application (which requires details of other children not subject to the proceedings). However W was adamant that this child was born in 2009: she said she had discovered this at the time through family members and H had told her this was not his child but the child of another man with whom his first wife had had a relationship. On this one narrow issue I find that W was telling the truth. If she had been seeking to mislead, it would have been much easier to adopt the 2010 date on the official records. However W supported H's case that for whatever reason it is common in Pakistan to record a child's date of birth as later, and therefore to show the child as younger, than is actually the case. I find on that basis that H's daughter was born to H and his first wife in July 2009, 18 months after their purported divorce.
72. There is some force, in my judgement, in W's point that H's first wife would not have registered their child with a birth year of 2010, regardless of the actual date of birth, if that would have shown her as having been born two years after a divorce.
73. Section 57 of the Divorce Act 1869, also provided to the court by Mr Anjum, provides that it shall be lawful for parties to a marriage to marry again after the expiry of six months from the date of a decree, but not sooner. The date on H's divorce certificate is 15.1.08. This marriage took place on 16.5.08.
74. Finally I take into account, although this is not determinative of this issue, the evidence of H's reunion with his first wife in 2019. On any view, their relationship had not continued uninterrupted, at least as far as H concerned, because from 2011 to 2018 he was living in the UK with W and bringing up their child. However the fact that when he went to Pakistan in 2019 H was apparently welcomed back by his wife and family as a father and husband who had been living and working abroad makes it less likely that a divorce had taken place in 2008 as H says.
75. All of these features of the evidence taken together lead me to conclude on the balance of probabilities that there was in fact no divorce and that H's marriage to his first wife was still subsisting as at 16.5.08.

The status of W's first marriage

76. In the unusual circumstances of this case, it is W who alleges that she was still married to DE at the date of the marriage in May 2008 and H who alleges that she was divorced.
77. In her witness statement for the immigration proceedings W said:
"I was previously married in 1998 and after two years of constant violence and ignorance from my ex-husband I got divorced."

78. In her evidence filed within these proceedings, and her oral evidence, W has said that her previous husband left her in 2000 and she had been separated from him since then, but had remained married.
79. W has given sworn evidence in the two separate sets of proceedings that each of these accounts is true. They cannot both be true. My task is to discern if possible where the truth lies.
80. H relies on a document purporting to be a decree of divorce between W and her first husband, dated 25.10.00. Like H's own divorce decree, this document was produced within the immigration proceedings and relied on by the First-tier Tribunal. I note in passing that the wording of both divorce decrees is almost identical, down to the paragraphs summarising each defendant's absence from the proceedings and the attempts at service. I also note that the grounds of divorce in both documents refer to 'incurable hatred', although this is not a term I can find anywhere in the Divorce Act 1869. Although I am anxious not to place too much weight on these observations, they perhaps support the suggestion that, as W says, H caused both to be created at the same time, as forged documents in support of his visa application.
81. W has produced a copy of a passport issued to her in 2004 in which DE is named as her husband. H says that W might well have continued to name her ex-husband even after divorce, if she was not at that time married to anyone else.
82. Very late in these proceedings, just one working day before the trial, W produced what she said was an affidavit from her first husband, DE, in which he appears to support her case that they have never divorced. W's oral evidence about the production of this document was unconvincing. She had no plausible explanation for the fact that the affidavit contained no detail about DE's current whereabouts or how he might be contacted, and although at the outset of the trial she said that he would be available to give oral evidence she subsequently told me during the course of her evidence that she had just received news that he had died. In the circumstances, I can give no weight to this document.
83. I must have regard to the inherent probabilities. W had a clear and obvious motivation to lie in the immigration proceedings, because she wanted to secure H's entry into the UK as her husband. She has had, in my view, less of a motivation to lie about this particular issue in these proceedings: her primary case is not that the marriage is void (and, as I recorded at the case management hearing, she has deliberately chosen not to issue a nullity petition) but that no marriage exists at all because the ceremony was a sham. Even if she loses on that point, it is open to her to rely on H's previous marriage in support of a finding that the marriage was void. The allegation that her own first marriage was also subsisting in May 2008 would, if untrue, have been an unnecessary embellishment.
84. I conclude on the balance of probabilities that W also was married and not divorced and that her first marriage to DE was still subsisting on 16.5.08.

H's 'behaviour' allegations

85. Both parties have filed evidence about the other's behaviour during the marriage. It has not been possible in the time allocated to this hearing to hear extensive oral evidence on these issues. What is very clear from the evidence is that by the date of the petition, if not well before, both parties were clear that their marriage was an end and neither wished to continue to live with the other. The

marriage had by then broken down irretrievably. Neither party at this hearing has suggested otherwise.

86. In my view, it is more likely than not that H's allegation that W told him she wanted him to leave the home is true. That would be consistent with W's feelings towards H in the period leading up to the issuing of the petition. She was (and remains) very angry at him because of his behaviour in, as she saw it, resuming his relationship with his first wife.
87. I remind the parties that the statute does not require fault or blame to be attributed. It may be that W cannot be criticised for asking H to leave the home. However the fact that she did so means, in my judgment, that H cannot reasonably be expected to live with her.
88. It is unnecessary to consider the other allegations made.

Conclusions

89. I have found that:
 - a. The ceremony that took place on 16.5.08 created a marriage that was recognised in accordance with the laws of the relevant jurisdiction.
 - b. At the time of the marriage, both parties were already lawfully married. The marriage was therefore void.
 - c. The marriage has irretrievably broken down.
 - d. W has behaved in such a way that means it would be unreasonable to expect H to continue to live with her.
90. W has thus far declined to issue a petition for nullity. I intend to give her the opportunity to do so if she wishes, and will stay H's divorce petition for four weeks to enable her to do so.
91. I can find nothing in the Matrimonial Causes Act or the Family Procedure Rules to suggest that a marriage which the court has found to be void may not be dissolved by way of a decree of divorce in circumstances where no nullity petition has been issued. Therefore, if W chooses not to take the opportunity which I have afforded her, and no nullity petition has been issued within four weeks of today, the stay on H's divorce petition will be lifted and decree nisi will be granted on the basis of the findings I have made.
