



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/05862/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields	Determination Promulgated
On 1 July 2014	On 10 July 2014
Prepared on 1 July 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**S. A.
(ANONYMITY DIRECTION)**

Appellant

And

ENTRY CLEARANCE OFFICER DHAKA

Respondent

Representation:

For the Appellant: Ms Pickering, Counsel instructed by David Gray
Solicitors

For the Respondent: Mr Dewison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Bangladesh who in reliance upon a marriage that she claimed to have entered into

with the sponsor in Bangladesh on 10 October 2008, applied for entry clearance for settlement as his spouse on 18 November 2012.

2. On 14 January 2013 the Respondent refused that application. He was not satisfied the Appellant had relied upon a genuine marriage certificate, or that she had supplied adequate evidence of a genuine and subsisting marriage to the sponsor. In consequence he was not satisfied the couple were in a genuine and subsisting relationship, or that the Appellant intended to live with the sponsor permanently in the UK as his spouse. Finally he was not satisfied the Appellant met the financial requirements set out in Appendix FM.
3. The Appellant lodged an appeal with the First Tier Tribunal against that decision, and as a result the decision was the subject of review by the ECM on 21 July 2013. The ECM upheld the decision and added the additional point that given the difficulties that had subsequently been revealed with City & Guilds English language testing in Bangladesh no weight should be given to the certificate relied upon by the Appellant, who had been offered a free retest.
4. The appeal was heard and dismissed by Judge Handley in a Determination promulgated on 13 January 2014. He was not satisfied on the evidence before him that the Appellant and the sponsor had entered into a genuine marriage, or that they had a genuine and subsisting relationship at the date of the decision under appeal.
5. The Appellant applied to the First Tier Tribunal for permission to appeal. Permission was granted by Judge PJG White on 14 April 2014.
6. The Respondent filed a Rule 24 Notice on 20 May 2014. She argued that the grounds were misconceived, and that there was no material error in the approach taken to the evidence by the Judge.
7. Neither party made a Rule 15(2A) application to introduce further evidence.
8. Thus the matter comes before me.
9. I accept as Ouseley J did in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the

light of all the other evidence in the case, especially that given by the claimant. The same can properly be said for a witness' oral evidence.

The grounds

10. Ms Pickering argued before me only two of the three grounds upon which permission to appeal had been sought, and granted. It was conceded that there was no merit in ground three, because; a) there had never been any evidence placed before the Judge about the sponsor's mental health, and so the Judge did not fail to take any relevant material into account, and, b) the sponsor had conceded to the Judge at the hearing [30] that he had been discharged from any continuing care by the Community Psychiatric Nurse. Whilst the Judge took account of the assertion that was made to him during submissions by the Appellant's representative that the sponsor had continuing mental health issues, their true nature was not properly identified to him in the evidence offered by the sponsor or his parents. The sponsor and his parents merely referred to "mental health problems" in their witness statements without offering any explanation of what they were. In the circumstances Ms Pickering accepted that she could not identify any error of law in the Judge's approach to the health of the sponsor.
11. In any event, were the sponsor to suffer from chronic serious mental ill health, it occurs to me that this would raise a concern about his capacity to enter into a valid marriage with the Appellant; Sheffield City Council v E [2004] EWHC 2808.
12. Ground two, which was argued, asserted that the Judge had failed to give adequate weight to the evidence of the sponsor, and his parents, concerning the regularity, length and content of his telephone contact with the Appellant. After due reflection Ms Pickering accepted that the only fair reading of the Determination was that the Judge had rejected this evidence as untrue. In those circumstances Ms Pickering did not seek to argue that the Judge gave inadequate reasons for that conclusion. In my judgement she was right not to do so.
13. The Judge did not overlook the evidence of the sponsor's parents; on the contrary he set out a summary of it in the Determination [18-19]. The Judge noted the sponsor had claimed to have been married to the Appellant for over five years, but accepted that he had not visited her in that time, so that they had last seen each other a few weeks after the date of the marriage relied upon. The Judge noted however that the sponsor claimed to speak

to the Appellant every day, for about an hour, which claim was corroborated by both of his parents.

14. Despite the claim to have such a significant level of regular telephone conversation together the Judge noted that the sponsor did not know if the Appellant worked, what her interests or her hobbies were, or, even if she had resat an English language test following the Respondent's invitation to do so for free following the problems with the reliability of City & Guilds language testing in Bangladesh. He was entitled to conclude that this was inconsistent with the claimed level of contact. There were no phone records that corroborated his claims as to the length and frequency of the calls he claimed to make to the Appellant, and thus, although the sponsor's parents had claimed to have been direct witnesses to many of these calls, the Judge gave adequate reasons for his decision.
15. Finally, ground one asserted the Judge had failed to take into account evidence that tended to show the document relied upon as the 2008 marriage certificate was genuine. That evidence was said to be: a) a further marriage certificate and confirmation from the Registrar that the marriage did take place, and, b) the evidence of the sponsor's parents, who claimed to have been present at the wedding.
16. The Respondent's original decision had taken two points in relation to the document dated 10 October 2008 which was said to be a genuine marriage certificate properly issued to the couple by a Registrar authorised to do so. First, that the ECO had been unable in the course of his enquiries to verify the marriage certificate with the individual who was said to be the Registrar who had issued it, because the Khadimpara Marriage Registry Office had been unable to provide a contact number for the individual named on the certificate. Second, that a member of the UKBA document verification team had concluded after examination of the document that it was a forgery, because certain features of the document were not consistent with a genuine marriage certificate. Of the latter, perhaps the most striking example was that the document was printed on the wrong coloured paper. The Respondent had produced evidence in the form of a "Document Examination Report", dated 22 November 2012 from an officer in the visa section trained in the detection of forgery which identified and described these concerns in full. The Judge was perfectly entitled to place weight upon that report.

17. In response the Appellant produced no evidence from the Khadimpara Marriage Registry Office (or indeed any other official body or organisation) to show that the individual who was recorded on the 2008 document as the Registrar who had issued that document, held such a post at the date that it was said to have been issued. Nor did the Appellant produce evidence to show that the features of the document identified by the Respondent were not uncommon in genuine documents of that type. Nor to show that paper of that colour had been in use at the relevant time for the purpose of creating documents of that type. If the document in question was genuine then I would have expected that evidence of this nature would have been available to the Appellant.
18. Instead the Appellant relied upon a document dated 9 October 2013 [ApB p25] which purported to be a certificate issued by Md Abdus Salam Rashidi, who was described in a stamp applied at the foot of the document as the Nikah & Divorce Registrar Kazi, Balagon Upozila, Sylhet. That certificate asserted that the Appellant and the sponsor had married and that “their marriage certificate” which was otherwise not identified by date, or index number, was original, and had been issued to them by the author. The certificate went on to assert that due to a spelling mistake (the nature and location of which was not identified) the author had issued a new certificate; a document also dated 9 October 2013 [ApB p26].
19. There are a number of difficulties with the assertions contained in the certificate of 9 October 2013. Perhaps the most obvious are;
 - a) the failure of the author to explain why the 2008 document is printed on blue coloured paper as opposed to Azure Lead paper,
 - b) the failure of the author to explain why neither his own signature nor his own stamp (as found on this document) can be identified upon the 2008 document, if he did indeed issue it in the capacity that he claimed to hold,
 - c) the failure of the author to explain the printing errors in the 2008 document, and the lack of a signature to the authentication stamp on the top left side of the first page, and,
 - d) the failure of the author to identify the 2008 document referred to by its date, or its book serial and page numbers.
20. In the circumstances the Appellant entirely failed to address the issue the Respondent had raised about the colour of the paper that a genuine marriage document

would be printed upon, or whether spelling errors would be found in the printed section of a genuine document, and offered no explanation for why Mr Rashidi's signature did not appear on the 2008 document.

21. Ms Pickering quite properly accepted before me that the Judge was not obliged to accept at face value the evidence of the sponsor's parents, any more than he was obliged to accept at face value the evidence of the sponsor, or the Appellant. She accepted that she could not properly assert that the Judge did not have their evidence in mind, given that it was summarised by him in the Determination [18-19]. Moreover the Judge was entitled to give weight to the issues raised by the sponsor's oral evidence, which plainly, and properly, gave him concern as to whether the sponsor and his parents were telling him the truth.
22. In the circumstances I am not satisfied that there was any error of law in the Judge's approach, which was not merely to focus upon the document that was said to be a marriage certificate, but to consider the entirety of the evidence which supported the Appellant's claim that she had entered into a marriage with the sponsor in 2008. For the reasons that he gave, which were entirely adequate, the Judge was not satisfied that he was being told the truth about this, or that the couple had done so. He made it abundantly clear why he considered he could place no significant weight upon either the document relied upon as the 2008 marriage certificate, or the documents created in 2013 which were relied upon as corroboration of the 2008 marriage. Whereas he could have gone on to spell out in terms a conclusion that the 2008 marriage certificate was a forgery, he did not do so, even though it is implicit in my judgement that this was his conclusion. In my judgement that conclusion was one that he was perfectly entitled to reach upon the evidence that was before him. There was no material error of law in his failure to set such a conclusion out in terms that requires me to set aside his decision and remake it.

Conclusions

23. In my judgement, and notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds advanced before me. It was open to the Judge to make the adverse findings of fact that he did, for the reasons that he gave, and to reach the conclusions that he did. The complaints made about the Judge's approach reveal no material error of law that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 13 January 2014 contained no error of law in the dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 1 July 2014

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 1 July 2014