Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/09687/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 April 2014	**On 28th April 2014**
Prepared 11 April 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MRS DILAN AHMED SHORI

Appellant

and

ENTRY CLEARANCE OFFICER - AMMAN

Respondent

Representation:

For the Appellant: Mr T D Hodson, of Messrs Elder Rahimi Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Iraq born on 1 April 1993 appeals, with permission, against a decision of Judge of the First-tier Tribunal Turquet who in a determination promulgated on 3 February 2014 dismissed the appellant's appeal against a decision

of the Entry Clearance Officer Amman to refuse her entry clearance as a spouse. Her application, which had been made in January 2013 was refused on 27 March under the provisions of Appendix FM of the Immigration Rules.

2. The refusal asserted that the Entry Clearance Officer did not accept that the relationship was genuine and subsisting nor that the maintenance requirements of the Rules were met.

3. The appellant's appeal was heard by Judge Turquet on 10 January 2014. She noted the reasons for refusal on the basis that the marriage was not subsisting. In brief these were that the appellant had stated that the wedding had been arranged by their respective families, the appellant and the sponsor had not married in their home country of Iraq in the presence of family members but in Jordan and that they had not spent any time together since they had married on 6 January 2013 and the appellant had applied for entry clearance six days later. There was no evidence of the prior arrangements which had been made by the respective families in Iran and Iraq for the wedding and it was not evident that they were present at the marriage. There was no evidence of shared financial responsibility.

4. The sponsor's evidence was that the appellant's father had been a friend of his father and while staying with him he had got to know the appellant and had fallen in love with her and they had spent a lot of time together. His mother had agreed but the appellant's father was more cautious and wanted to make enquiries about the appellant. Having done so, he agreed to the wedding. There had been an engagement party in the appellant's family home in September 2011 and they had decided to marry in Jordan because they understood that marriage certificates from Iraq were often challenged by the British authorities. They had married in a registry office in Amman with witnesses and then stayed together in a hotel there before the appellant had returned to Britain. After he had returned he had communicated with the appellant by e-mail and other modern methods of communication. They had both been upset by the refusal.

5. When considering the marriage the judge said that she considered there was very little supporting evidence that there was a subsisting marriage at the date of decision. She stated there was no evidence of the marriage taking place in Iraq (an error as the marriage took place in Jordan) and there was no evidence from the appellant's family confirming the reasons for the marriage taking place away from the country where they lived. She went on to state:-

> "The sponsor was keen for me to see engagement DVD. However this is not evidence that a marriage subsists. Evidence post decision is admissible if it throws light on the circumstances at the date of decision. In this case the couple had not seen each other since last January. I found the sponsor's evidence for this to be unsatisfactory and not consistent with him being a party to a genuine and subsisting marriage. He said he could not go back and see his wife because there was no time. He initially said that he only got two weeks holiday and it cost too much. However his contract indicates that

> he gets 25 working days plus eight bank holidays. The contract refers to a five day week, which would give him over five weeks' holiday."

6. She noted that there was a record of e-mails, texts and phone bills to December 2012 but said there was no supporting evidence of contact between the end of 2012 and the photographs of the couple in Jordan. There was no supporting evidence of contact since the wedding. She also stated there was no evidence of money being sent by the sponsor to his wife.

7. In the grounds of appeal it was argued that the sponsor had explained that there was no embassy to which he and his wife could travel in Iraq and it was easier for them to travel to Jordan to get married and make the application. Moreover, there was in the bundle of documents evidence that money had been sent by the sponsor to the appellant. The reason that the sponsor had not been able to travel to Iraq to see his wife was that he had two jobs in Britain and therefore although one contract gave him time off he was still working for the other employer during the holidays from the other job.

8. I consider that the judge made material errors of law in her assessment of the evidence relating to the appellant's marriage in that she does not appear to have taken into account the evidence that the sponsor was sending money to the appellant, that there was a sensible and reasonable explanation as to why the appellant and the sponsor had married in Jordan and that the judge appeared to have placed no weight on the evidence of electronic communication in the bundle let alone the photographs and the DVD of the engagement ceremony. It is bizarre to consider that where an elaborate engagement ceremony such as that shown on the DVD takes place that somehow the marriage was not subsisting. The period between the engagement ceremony and the marriage application was just over 15 months. For a marriage to be subsisting it must have been genuine in the first place and there is clear evidence that this was a genuine marriage. I cannot conceive of a situation in the appellant's culture where there would be such an elaborate engagement ceremony when the relationship was not genuine. I do not understand the judge's comment in paragraph 18 of the determination that there seemed to be little evidence of what happened between December 2012 and the date of the application given that that was a matter of days and moreover that the evidence of the sponsor was that he and the appellant stayed in a hotel in Amman after the wedding until the sponsor had to return to Britain. Moreover, I also accept that he has limited opportunity to travel to see his wife given that he has two jobs here. I do not consider that the suggestion of the judge that the appellant and his wife could meet in Europe is viable particularly given that the appellant is Iraqi and has a refusal of entry clearance evidenced from her passport. I consider that the chance of her being able to travel to Europe for a short stay is extremely unlikely.

9. Finally I would add that I observed the sponsor through the hearing. He was clearly a man who was upset by the delay and I would conclude by stating that I am

convinced that this is a genuine marriage. I would add that Mr McVeety also accepted that the marriage was genuine.

10. However the application was also refused on the grounds that the appellant did not meet the maintenance requirements of the Rules. These are that the sponsor must be able to show that he was earning the sum of £18,600 at the date of the decision. The issue is that to show that he was earning that sum the rigid financial requirements of the Rules must be met.

11. Having considered the documentary evidence it is my conclusion that the sponsor is earning over the requisite sum of £18,600. I reach that conclusion particularly taking into account the letter of 3 September 2013 from HM Revenue and Customs confirming his employment history and his PAYE coding. That letter records his employment with Toyoda Gosei UK Limited with a salary of £14,083 on which he paid tax of £1,194.80 and his employment with Bakhtyar Abdullah Agha where his pay from the start date of 15 July 2012 to 5 April 2013 was £5,790 with the payment of tax of £202.20. I also note the P60s in the appellant's bundle together with the relevant payslips showing deduction of tax. Indeed it is accepted that the sums showing his income from Toyoda Gosei UK Limited are as asserted by the sponsor. However the difficulty relates to the evidence required showing the appellant's income from Bakhtyar Abdullah Agha whose business "Select and Save" was the sponsor's second employer. In order to provide appropriate evidence for that employment the appellant had to show the relevant documents as set out in Appendix E-ECP.3.3 of the Rules which in turn refer to paragraph EC-P.1.1(d) of Appendix FM of the Rules. The specified documents are set out under Appendix FM-SE which states in the section headed "Evidence of financial requirements" at paragraph 2 that in respect of salaried employment a P60 for the relevant period should be provided if issued and then refers to wage slips covering a period of six months prior to the date of application or any period of salaried employment in the twelve months prior to the date of application if the applicant had been employed by their current employer for less than six months and a letter from the employer who issued the payslips confirming the person's employment and gross annual salary, the length of their employment, the period over which they have been or were paid the level of salary relied upon in the application and the type of employment together with a signed contract and monthly personal bank statements corresponding to the same period as the wage slips. The difficulty for the appellant is that although there were wage slips for the period August 2012 to the end of January 2013, these did not necessarily correspond to the sums paid into the appellant's bank and indeed one payment into the bank was missing. Moreover the appellant's contract for his work with "Select and Save" had not been submitted. I therefore must conclude that the appellant's appeal could not succeed under the terms of the Immigration Rules. I therefore conclude that there is o material error of law in the judge's decision that this appeal cannot succeed under the financial requirements of the rules.

12. I have very considerable sympathy with the sponsor and the appellant in this case in that I believe that the sponsor's work brings in an income of over £18,600 and that

therefore the principal issue in the financial requirements – the income threshold – is met. However, this is not a situation in which the "evidential flexibility" provisions of Rule 245AA would be relevant given that it is not the case that there is merely one in a series of documents is missing and that the appellant should be given the opportunity to provide that document. I have therefore concluded that it would not be appropriate to do anything other than dismiss this appeal on immigration grounds.

13. Moreover, I do not consider that there are any exceptional circumstances which are relevant in this case – there is nothing to indicate that the appellant and his wife would not live together in Iraq. I would add that while I note that the judgment of Blake J in **MM [2013] EWHC 1900** indicates that Blake J considered that an income of £13,400 would be an appropriate income level and that that sum would mean that the appellants would meet the financial requirements of the Rules, the judgment in **MM** has been appealed to the Court of Appeal and I consider that it would be inappropriate to allow this appeal not only because the appeal against the decision of Blake J in **MM** is before the Court of Appeal but also because the conclusion of Blake J was that it was not appropriate to strike down the financial requirements of the Rules.

14. I consider that it is not unduly harsh to conclude that a fresh application should be made particularly as it appears that applications in Jordan are dealt with relatively quickly. I would emphasise that I believe this is a genuine marriage and I also believe that the sponsor's income is above the income threshold in the Rules. I therefore trust that when an application is made with the relevant specified documents it should be dealt with speedily and I trust that provided the specified documents are produced, entry clearance will be granted.

Decision.

The determination of the Judge of the first-tier dismissing this appeal on immigration and human rights grounds shall stand.

Signed Date

Upper Tribunal Judge McGeachy