



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/18299/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 23rd September 2014 & 11th December 2014**

**Determination Promulgated
On 18th December 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SAIWAN SALAHALDDIN AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Frantzis of Counsel instructed by Melanie Craig Solicitor
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer (Mr Diwncyz on the second occasion)

DECISION AND DIRECTIONS

1. This is the Appellant's appeal against the decision of Judge Wilson made following a hearing at Bradford on 20th June, 2014.

Background

2. The Appellant is a citizen of Iraq born on 19th May 1979. He applied to come to the UK as the wife of Joanne Ahmed but was refused entry clearance on the grounds that

the Entry Clearance Officer was not satisfied that he had a genuine and subsisting relationship with his Sponsor nor that he intended to live permanently with her in the UK.

3. There was a considerable amount of evidence before him in support of the Appellant's case. Most of the evidence of contact by telephone was postdecision. The judge said:

"At the hearing it was submitted on the Appellant's behalf that I should take account of all telephone communication records including all postdecision records as appertaining to the refusal decision. I do not uphold this submission because irrespective of any other considerations as to law in this matter and the interpretation of Section 85A of the Nationality, Immigration and Asylum Act 2002, I find that the telephone records were entirely new evidence of calls arising after the date of the decision and that they did not appertain to the circumstances at the time of the decision. This is because having regard to the whole of the evidence I cannot be satisfied that this was a genuine and subsisting relationship or that the parties intended to live together permanently in the UK."

4. I am satisfied that the judge erred in law for the following reasons.
5. First, the judge was in error in his interpretation of postdecision evidence. In DR (ECO postdecision evidence) Morocco* Ousely J held that, whilst evidence of postdecision facts were precluded, the admission of further evidence adduced in order to establish what the true picture was at the time the decision was made, was not.
6. Second, in deciding to exclude the postdecision evidence because he was not satisfied that the couple were in a genuine and subsisting relationship, the judge did not have proper regard to the whole of the evidence in reaching his conclusions. He declined to consider relevant evidence on the grounds that he had already reached a conclusion.
7. Third, I am also satisfied that he erred in relation to his consideration of the oral evidence. The Sponsor's two daughters gave evidence as to the Appellant's and their mother's intentions. The judge stated that their evidence was not relevant, but it clearly was potentially supportive of the Appellant's claim and ought to have been considered.
8. Fourth, the judge appeared to cast doubt on the evidence of the Sponsor's visits to Iraq but that was not a matter in dispute. The Entry Clearance Officer accepted that the visits had taken place.
9. Fifth, the judge referred to the Appellant's and Sponsor's chequered history of relationships. Whilst he was entitled to make that observation in respect of the Sponsor, who is now in his third relationship with a British national, there is nothing in the Sponsor's history which could properly be described in such terms.

10. Finally, the judge said that the photographs which had been produced were unexplained and he could not know what the pictures were intended to signify. However the Sponsor's witness statement explained the circumstances of her visits to Iraq and her contact with the Appellant's family there.
11. I am satisfied that, cumulatively, these errors render the judge's findings unsafe so that the decision will have to be re-made. His decision is set aside. I was informed that the Sponsor is presently in Iraq visiting her husband and therefore the appeal could not be concluded today. It was therefore adjourned to 11th December 2014.

The resumed hearing

12. I heard oral evidence from the Sponsor, Joanne Ahmed and her daughters Lauren and Natalie Steward. All confirmed their witness statements and the strength of the relationship. None of the evidence was challenged by Mr Diwnycz who observed that the witnesses presented themselves as people who knew their own minds and he was happy to accept that the Sponsor was wholly devoted to the Appellant. He did however rely on the Entry Clearance Officer's refusal and his belief that the Appellant's intentions were not as stated by him because of the previous serial applications that he had made.

The Factual Basis of the Applications

13. The history of this matter is as follows. The Appellant came to the UK in August 2001 and claimed asylum. He was refused and the subsequent appeal was dismissed. He became appeal rights exhausted on 22nd May 2002 but no removal decision was made.
14. The Appellant began a relationship with a British citizen in March 2001 and in July 2004 they married. The marriage broke down almost immediately, in October 2004. No immigration application was ever made on the basis of that relationship.
15. In September 2005 the Appellant and Sponsor met and they began a relationship. It lasted for a little over six months and broke down in May 2006. It is the evidence of all parties that the couple remained friends and kept in touch after their relationship ended. In November 2006 the Sponsor began a relationship with another man, and in February 2007 the Appellant began a relationship with another woman.
16. He was removed from the UK in March 2010.
17. The Appellant made a fiancé application in March 2011 which was subsequently refused in September 2011 and in October 2011 that relationship ended. From the end of 2011 the Sponsor and Appellant resumed more frequent contact and in May 2012 she visited him in Iraq. They became engaged and married in September 2012.
18. The Entry Clearance Officer, unsurprisingly, was very concerned that the Appellant appeared to be using the Sponsor as a way of returning to the UK, particularly since

in the Entry Clearance Manager's review, it refers to three marriages with GBR nationals and relationships which appear to have been running concurrently.

19. I am satisfied that the Entry Clearance Manager is mistaken. The Appellant has been married once before to a British national, and it did not result in a marriage application. He did subsequently apply to come to the UK as a fiancé but that relationship broke down shortly after the refusal and was not pursued to appeal. I am satisfied that, contrary to the view of the Entry Clearance Manager, the relationships described were not simultaneous. At the time that the Appellant was engaged to another woman he was friends with the Sponsor but they were not in a romantic relationship. Nevertheless his history was clearly a sufficient basis for legitimate concerns to be raised.
20. I am satisfied that they are misplaced. No credibility issues were raised with the oral evidence by the Presenting Officer today.
21. So far as the relationship with the Sponsor is concerned, the evidence is unchallenged. The couple had a relatively brief relationship between 2005 and 2006 and thereafter remained on friendly terms and reunited in 2012. Natalie Stewart, the Sponsor's daughter, said that she kept in touch from 2005 to 2010, after the initial split, because she remained close friends with him, and she had known about his other relationships. I am satisfied that the Sponsor and her family retained good contact after the initial relationship finished. Indeed, there can be no other logical explanation for the Sponsor to have visited Iraq in that year.
22. Subsequent contact casts light on the circumstances as they were at the date of decision. The Sponsor has visited the Appellant in Sulaymaniyah six times, in April and September 2012, March and September 2013 and February and September 2014. The evidence was that she had some legitimate anxiety for her safety. In spite of that, all three witnesses said that the Sponsor fully intended to settle with the Appellant in Iraq if the appeal was dismissed. There is also very strong evidence of telephone contact, almost daily contact, and the oral evidence from the two daughters who say that they are in touch with him by Skype, email etc.
23. This is a relatively long-lived relationship. The couple have known each other for almost ten years. The best person to judge the Appellant's intentions is the Sponsor; I have no doubt that if her daughters had any anxiety about whether their mother was being used for the purpose of obtaining a visa they would not have volunteered to give evidence in the appeal.

Decision

24. The original judge erred in law and his decision has been set aside. It is remade as follows. The Appellant's appeal is allowed.

Signed

Date **11th December 2014**

Upper Tribunal Judge Taylor