



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/23921/2012

THE IMMIGRATION ACTS

Heard at Field House
On 7th March 2014

Determination Promulgated
On 31st March 2014
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Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR RASAGOPAL THAMBIMUTHU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sri Lanka born on 25th March 1972. He made an application for entry clearance as a spouse. This was refused by the Entry Clearance Officer on 16th October 2012 for the reasons as contained in the notice of refusal.

2. Essentially it was said that the appellant had previously submitted a false marriage certificate. In relation to the current application a false refugee identity document was also submitted. It was also contended that the marriage certificate submitted in support of the current application did not match that which had previously been submitted and it was contended that that also was false. Thus the Entry Clearance Officer was not satisfied that the appellant and the sponsor had contracted a valid marriage.
3. The matter came before First-tier Tribunal Judge Barker on 6th December 2013. On that occasion the sponsor attended and gave evidence.
4. In relation to the false marriage certificate submitted on the previous occasion ,it was her evidence that she relied upon the assistance of others and had no knowledge that it was false. She stressed the difficulty of getting documents in the situation that existed in Sri Lanka. As to the identity card, her evidence was that she had obtained it and had no knowledge that it was false. Reliance is placed by the respondent upon the document verification report which was issued on 23rd July 2013.
5. The sponsor did not accept, however, that a false marriage certificate had been issued in the current situation.
6. The Entry Clearance Officer, in the refusal of entry clearance had noted that only a translation of the marriage certificate had been provided. Enquiries had produced the response that that was not capable of being verified without the original or a copy of the original being available.
7. The Judge doubted the credibility of the sponsor for a number of reasons as set out in the determination but in particular at paragraph 29 of the determination stated that there has been nothing from the appellant to verify the information directly and no certificates had been produced to the Tribunal and no documents verifying the marriage. He said it was a duty upon the appellant to ensure that necessary documents were put before the Tribunal. In those circumstances the judge was not satisfied that the appellant and sponsor were married.
8. Grounds of appeal were submitted against that decision. A complaint was made that it was unfair of the Judge to take the absence of documentation against the appellant, particularly when the respondent's bundle had not been presented and the ECO had not complied with directions to produce the bundle to the First-tier Tribunal.
9. Permission to appeal was granted on the basis that the marriage certificate which had been produced to the ECO, had not been challenged as to its authenticity and had not been produced by the ECO. It was argued that the appellant should not be penalised for the non-availability of a document that had been produced to the ECO.
10. Mr Muquit, who represents the appellant, submitted that the original of the marriage certificate had indeed been sent to the ECO and was therefore capable of verification.

He did not accept that the ECO only received a translation of that document. In support of that contention he invites my attention to two documents. The first document is a letter from the solicitors to the Entry Clearance Officer dated 14th June 2012. This was the letter sending the relevant documents in support of the application and the letter makes it clear that the original of the marriage certificate together with a translation have been sent.

11. Further support for that matter is his contention that, having received the respondent's bundle of documents shortly before the hearing, it is apparent that the Entry Clearance Officer did receive the certificate because there is contained within the bundle a copy of the marriage certificate itself.
12. Mr Avery, on behalf of the respondent, indicated that he had no prior knowledge of this document in his file and was proceeding or intending to proceed on the basis that there was no such document in existence.
13. Whether or not the original was sent or whether a copy was sent is perhaps to be considered at some stage. The copy in the bundle bears the certificate number and seems to be a scanned copy of a marriage register filed in the office and dated 24th April 2012. Whether therefore the original was sent or whether a scanned certified copy was sent is not entirely clear.
14. However, what seems to be clear is that within the respondent's bundle, and I have no reason to doubt what Counsel says to me on that matter, there is a copy of the marriage certificate.
15. That serves to throw into sharp relief the comments made by the Tribunal Judge in paragraph 29 and the rejection of the sponsor's evidence in part because of the absence of that document.
16. In fairness to the respondent it is to be noted that the Immigration Judge makes other criticisms of the appellant and sponsor in terms of the evidence which has been produced to support the marriage. However, the marriage certificate clearly is a central document in these proceedings and its absence at a crucial juncture raises starkly the issue of fairness, whether real or perceived.
17. Now that the document has come to light it seems to me only fair that the decision of the First-tier Tribunal is set aside to be remade so that the fullest consideration can be given to all the documentation that has been presented. Although it is entirely understandable why the Judge came to the findings that he did, it is clear that there was a mistake of fact as set out in the principles of **E and R** and that there was indeed within the papers a marriage certificate. As that mistaken fact may have a material influence upon the overall outcome of the appeal it seems to me that there is a material error of law such that the decision should be set aside and remade.
18. I indicated to Mr Muquit, however, that merely producing a copy of the marriage certificate without more may not be sufficient to outweigh the other documents that

had been presented which were accepted to be false. It would be open to the Judge to consider applying the principles of **Tanveer Ahmed**.

19. I suggested to Mr Muquit that in the absence of the original being found there should be direct communication with the registrar who issued the document sending the copy of the original to the registry with the request that it verify whether that was indeed an accurate document which it had issued and further whether it can confirm that it is a genuine document reflective of its records. Though I cannot compel the appellant's solicitors to make such enquiries, I stress that it might be very prudent for them to be made in all the circumstances.

Directions

- (1) The decision of Judge Baker shall be set aside to be remade.
- (2) Having regard to the Senior President's Practice Direction particularly paragraph 7 thereof I conclude that there should be a full rehearing before the First-tier Tribunal.
- (3) I would expect to be further enquiries made by or on behalf of the appellant concerning the marriage certificate itself. The results of any such enquiries to be notified to the respondent no later than seven days prior to the hearing. As to any further directions they will be a matter for the First-tier and not for me.

Signed

Date

Upper Tribunal Judge King TD