IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/09252/2014
OA/09253/2014
OA/09254/2014
OA/09255/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 October 2015	**On 7 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

SABREEN MTASHA EL ANIZI
HAMAD FAWZAN EL ANIZI
HAMZA FAWZAN EL ANIZI
HUSSEIN FAWZAN EL ANIZI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - BEIRUT

Respondent

Representation:
For the Appellants: Mr A Mahmood of Counsel instructed by Aman Solicitors
For the Respondent: Ms S Sreeraman of the Specialist Appeals Team

ERROR OF LAW DECISION AND REASONS

The Appellants and the Respondent's decisions

1. The Appellants are mother, born in 1974, and her three sons born 1999, 2002 and 2004. They are stateless and undocumented Bidoon living in Tyre, Lebanon at the time of their application for entry clearance to join their husband and father, Ali Mbarak El Anizi who has been recognised as a stateless refugee under the Refugee Convention by the United Kingdom. His date of birth is given as 1 January 1985 and he arrived in the United Kingdom on 12 March 2011.

2. On 14 July 2014 under reference number 170102 the Respondent refused the application of each of the Appellants. The mother was refused because the only documentary evidence of her subsisting marriage to her husband who is her Sponsor was "only a poor quality Marriage Certificate". The Respondent considered she did not intend to live together permanently with her husband. There was little or no evidence of any contact or communication with him over the years in which they had lived apart. There was no photographic evidence of their marriage or of having lived a family life together before her husband came to the United Kingdom. Her application was therefore refused under paragraph 352A(iv) of the Immigration Rules which requires that "each of the parties intends to live permanently with the other as his or her spouse … and the marriage is subsisting …".

3. The Respondent considered the claim by reference to Article 8 of the European Convention. He referred again to the lack of satisfactory evidence that the mother and the Sponsor were part of a family unit and that they had enjoyed family life together until he had fled. Additionally, he considered the Sponsor could join the mother in "Lebanon or another neighbouring country of safety which will also be close to your cultural way of living, to establish family life". Her exclusion from the United Kingdom was therefore considered proportionate to the need to maintain effective immigration control.

4. The children were refused on the basis that their mother had been refused and the Respondent referred to paragraph 352D of the Immigration Rules which provides as follows:-

> '352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who has been granted refugee status are that the applicant:
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> (i) is the child of a parent who is currently a refugee granted status as such under the immigration rules in the United Kingdom; and
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> (ii) is under the age of 18, and
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> (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum; and

(v) would not be excluded from protection by virtue of article 1F of the United Nations Convention and Protocol relating to the Status of Refugees if he were to seek asylum in his own right; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.'

5. On 23 February 2015 the Entry Clearance Manager reviewed the decision. He noted no additional evidence other than the money transfer receipt had been filed with the grounds of appeal. He noted the Sponsor was not the biological father of the child Appellants and there was no evidence their biological father had relinquished parental responsibility. Indeed, there was no information of his whereabouts and no evidence he had consented to their going with their mother to the United Kingdom. The Entry Clearance Manager also noted there was no satisfactory evidence that the children were part of the Sponsor's family before he left Kuwait. Given these matters he submitted that any appeal should be dismissed.

First-tier Tribunal Proceedings

6. The Appellants appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are that the mother is an undocumented Bidoon and was therefore unable to obtain passports or other official identification documents. Her husband had been accepted by the United Kingdom authorities as an undocumented Bidoon from Kuwait and the discrimination faced by them amounted to persecution. The grounds referred to the determination in *NM (Documented/Undocumented Bidoon: Risk) Kuwait CG [2013] UKUT 356 (IAC)*. They asserted the applications for entry clearance were made as soon as practicable after the Sponsor's position in the United Kingdom was clarified and he had secured accommodation for himself and his family. The other grounds assert the genuineness and subsistence of the marriage of the mother and the Sponsor and disagreement with the Respondent's decision.

7. By a determination promulgated on 27 April 2015 Judge of the First-tier Tribunal A M S Green dismissed the appeals on immigration and human rights grounds.

8. On 23 July 2015 Judge of the First-tier Tribunal Brunnen granted the Appellants permission to appeal because it was arguable the Judge had erred in law by proceeding on the basis that the original Marriage Certificate of the mother and the Sponsor had not been produced to the Respondent. He noted the Respondent's decision referred to a poor quality Marriage Certificate but not to a copy of a Marriage Certificate. Other references to documents made by the Respondent had differentiated copies from original documents and the Marriage Certificate had not

been described as a copy. This went to the issue whether the mother and Sponsor had entered into a genuine marriage.

9. Judge Brunnen also considered it was an arguable error of law that the Judge had failed to consider whether evidence of telephone contact subsequent to the date of decision under appeal subsequent to the Respondent's decision shed light on the nature of the relationship between the mother and the Sponsor as at the date of decision.

10. On the Tribunal file was a response to the grant of permission to appeal asserting that the Judge had appropriately directed himself and conducted a very careful analysis of the evidence, finding numerous deficiencies in it as mentioned at paragraphs 22(iv) – (ix) of his decision; the issue whether the marriage certificate was an original or a copy was a minor part of the basis for the Respondent's adverse findings and that in any event the document alone was inadequate to demonstrate a lawful marriage.

The Upper Tribunal Hearing

11. The Sponsor attended the hearing. I explained the purpose and procedure to be adopted. He took no active part other than to confirm his address as noted on the Tribunal File.

Submissions for the Appellants

12. Mr Mahmood submitted the Sponsor had been accorded refugee status on 4 June 2013, having arrived on 12 March 2011. The original Marriage Certificate had been submitted to the Respondent who had not supplied a bundle for the hearing in the First-tier Tribunal. Ms Sreeraman interjected that whether the Marriage Certificate which had been submitted was an original was not considered now to be a live issue.

13. Mr Mahmood continued the Sponsor had produced records of telephone contact with the mother and the Judge had been in error to have dismissed such evidence and also the evidence of the money transfers by the Sponsor at page 126 of the Appellants' bundle. I noted this referred to a single transmission of £620 on 4 August 2014 to the mother in Lebanon. He submitted that although it was evidence of matters after the date of the decision under appeal, such evidence should have been considered, following the jurisprudence in *DR (ECO: Post-decision decision) Morocco* [2005] UKIAT 00038* and *Naz (Subsisting marriage – standard of proof) Pakistan [2012] UKUT 00040 (IAC)*. The evidence corroborated the subsistence of the relationship of the Appellant mother and the Sponsor.

Submissions for the Respondent

14. Ms Sreeraman relied on the Respondent's Procedure Rule 24 response. It was accepted that at paragraph 22(v) the Judge may have erred in fact but in any event it

was not material and the decision was justified in respect of other valid findings made by the Judge.

15. The Judge's consideration whether the marriage of the mother and the Sponsor was subsisting had been conducted in the proper manner and he had not erred in his assessment of the evidence of telephone contact and the transmission of money. There was no evidence of either of these matters in respect of periods before the date of the decision and the Judge's conclusions at paragraph 33 of his decision were sustainable. At paragraph 33 he had concluded there was insufficient evidence to show there was a genuine marriage between the mother and the Sponsor and that they were living in a genuine and subsisting relationship. On that basis he had declined to consider issues relating to the nature of any communications between them concluding that even if they were married on the evidence before the First-tier Tribunal he would not have accepted that the relationship was genuine and subsisting. That conclusion also disposed of the appeals by the children.

Further Submissions for the Appellants

16. Mr Mahmood submitted the evidence before the Judge was that the Respondent had the original Marriage Certificate at the Beirut visa post. He had not submitted a bundle for the hearing. I noted the Respondent's bundle is stamped as filed with the First-tier Tribunal on the day after the hearing before the Judge. A copy of the Marriage Certificate with translation was submitted in the Appellants' bundle filed on 27 October 2015. If the Judge was found to have held there was no Marriage Certificate then that was a finding which was contrary to the facts and amounted to a material error of law whether the mother and Sponsor were married.

17. The Judge should have admitted the post-decision evidence having regard to the jurisprudence in *DR (Morocco)* because it corroborated the Sponsor's oral testimony at the hearing of matters at or before the date of the decisions under appeal. The Sponsor when screened had identified the names of the mother and children to be found at p.90 of the Appellants' bundle. This was weighty corroborative evidence. The Appellants and Sponsor had provided adequate evidence of the subsistence of their relationship and the decision of the First-tier Tribunal should be set aside.

Findings and Consideration

18. Having secured the agreement from both parties that if there was an error of law in the Judge's decision then the matter would need to heard afresh and remitted to the First-tier Tribunal, I reserved my decision. I now give my decision and the reasons for it.

19. The Judge erred in his treatment of the production of the original Marriage Certificate. In the course of the hearing it emerged that it was produced to the Respondent, Consequently, the Judge's finding that the marriage was not a genuine one based on that treatment is an error of fact. Whether there is a subsisting

marriage relationship between the parties to the marriage. Given the extent of the Judge's treatment of the "Marriage Certificate issue" there is the likelihood that its treatment will have influenced or be perceived to have influenced his treatment of the evidence before him in support of the claim that the marriage between the mother and the Sponsor is subsisting.

20. Turning to paragraph 22(vii) of the Judge's decision, by the time the Tribunal file reached me to prepare for the hearing, there was in it evidence of telephone records matching the description referred to in paragraph 22(vii). Nearly all of the calls were made to the same number and are all of a duration which would appear to corroborate the procedure described by the Sponsor and set out by the Judge in paragraph 22(vii) of his decision.

21. I am satisfied that these two matters of omission, neither of which are attributable to the Judge, were material to and infected his findings.

22. I go on to refer to the Judge's finding that the Appellants are documented Bidoon contained in paragraph 1 of his decision. This finding is not made by way of reference to any evidence. It would appear not to reflect what was said at paragraphs 9,33, 40 and 82-86 of the determination in *NM (Documented/Undocumented Bidoon: Risk) Kuwait CG [2013] UKUT 356 (IAC)* and also paragraphs 88-92 of that determination which state:-

> "88. It is important that we are clear about the relevant terminology. The Tribunal in BA distinguished between undocumented Bidoon, i.e. those who did not have civil identification documents, and documented Bidoon, i.e. those who had been documented as citizens of other countries, mainly Saudi Arabia and Syria. This documentation enabled them to obtain residency permits and other official papers.
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> 89. In HE the Tribunal noted the distinction drawn in BA, and expressed the view that "civil identification documents" would include residence permits and other official papers issued by the Kuwaiti authorities, but would not include attendance cards, such as that held by HE, since it specified that it was not an identity card, or birth certificate where the parents were not Kuwaiti nationals or legal residents.
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> 90. The March 2011 COIR, at paragraphs 19.32-19.34 draws a distinction between documented Bidoon (those registered with the Executive Committee for Illegal Residents (the Bidoon Committee) by June 2000) and undocumented Bidoon (those not so registered).
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> 91. Human Rights Watch (HRW) in their report of 12 June 2011: "Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness" employ the categorisation of registered and unregistered Bidoon. This essentially mirrors the categorisation in the COIR, as Human Rights Watch categorises the registered Bidoon as those who registered with the Bidoon Committee between 1996 and 2000 as stateless residents of Kuwait with claims to Kuwaiti nationality. In effect, according to HRW, from registration flows access to a security card, and from possession of a security card flows

> potential access to civil documents such as birth, marriage and death certificates and passports. It is clear from this report, which we have found to be especially helpful, that registration is the gateway to relevant and potentially significant documents. However, since it is clear that a person may be refused renewal of their security card, and the evidence shows that possession of a security card is crucial for access to the range of benefits set out at paragraphs 38-45 above, we conclude that the distinction between 24 documented and undocumented Bidoon remains the point of significance, albeit on the basis of possession of a security card rather than "civil identification documents" as held in HE.
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> 92. The situation of the undocumented Bidoon on the basis of this more recent evidence appears to be essentially similar to that of the undocumented Bidoon as assessed in HE in terms of the significant lack of access to basic benefits and rights."

23. For these reasons I find that the decision of the First-tier Tribunal contained material errors of law such that it should be set aside and the matter heard afresh.

24. Having regard to the nature and extent of the fact finding which will be required, the provisions of s.12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), I conclude the matter should be remitted to the First-tier Tribunal to decide.

Anonymity

25. There was no request for an anonymity direction or order and although there are minor children I do not find that any is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained errors of law such that it cannot stand and must be set aside in its entirety.

The matter is remitted to the First-tier Tribunal for a fresh decision to be made.

No anonymity direction or order made.

Signed/Official Crest Date 05. i. 2016

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal