



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/12642/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 8 May 2018**

**Decision & Reasons  
Promulgated  
On 11 May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

**S. A.**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER AMMAN**

Respondent

**Representation:**

For the Appellant: Mr Moran, Solicitor, Alex Moran Immigration Law  
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Syria, who applied for entry clearance to settle as the spouse of one who had been granted refugee status, relying upon the refugee family reunion provisions of the Immigration Rules; paragraph 352A. Her application was refused by the ECO on 25 September 2017 on the basis he was not satisfied that (i) the marriage was subsisting, (ii) the Appellant was the spouse of a refugee and that the couple intended to live together as such in the UK, and, (iii) the Appellant had been a member of the pre-flight family unit of the sponsor.

2. The ECO's decision was not subject to an ECM review. The Appellant's appeal came before First tier Tribunal Judge Nicholls, and it was allowed in a decision promulgated on 20 February 2018.
3. The Respondent sought permission to appeal from the First tier Tribunal on two grounds; first, that the sponsor was habitually resident in Syria, and did not marry the Appellant until after he had left that country, so the Appellant could not meet the requirements of paragraph 352A; second, that it was not open to the Judge to find that the proxy marriage relied upon was recognised in Syria. Permission to appeal was granted to the Respondent on both grounds by Judge Grant-Hutchinson on 16 March 2018.
4. The Appellant responded to the grant of permission with a detailed Rule 24 reply dated 16 April 2018, which has been most helpful in identifying the relevant jurisprudence. Thus the matter comes before me.
5. No challenge has been offered in the grounds, or before me, to the Judge's conclusion that this was a genuine and subsisting relationship of marriage, the parties to whom intend to live together.
6. Although the ECO did raise within the refusal decision the issue of whether the parties were able to enter into a lawful proxy marriage together, recognised by the Syrian authorities under Syrian law, it is accepted before me that it was open to the Judge on the evidence before her to accept that they were, and, that they had done so. The Respondent placed no evidence before the Judge to show that the documents relied upon were forgeries, or, that Syrian law did not permit that which had occurred. There was simply no evidential foundation laid before the Judge for the assertion that is made at the conclusion of the grounds that if the Appellant had become habitually resident in Turkey, he could not enter into a valid proxy marriage under Syrian law. Nor is any such evidence produced in support of the grounds.
7. The ECO did not himself raise any issue over which was the sponsor's country of habitual residence at the date of the marriage relied upon, and the Respondent did not raise this as an issue at the hearing of the appeal. The Judge was however clearly alert to the need to identify it, and did so [15]. Thus she found that the couple were lawfully married before he left Turkey, his then country of habitual residence, to seek asylum. Before me it is accepted that it was open to the Judge on the evidence before her to make such a finding, even if she did not make any reference to any applicable jurisprudence within her decision. The sponsor had described in his written evidence filed for the appeal, when he had left Syria, and the countries through which he had travelled, and in which he had lived, before coming to the UK. He described transit through Jordan and Egypt, and a lengthy period in Libya during which he held a legitimate work permit. When it proved impossible to renew, and the security situation deteriorated, he abandoned Libya in favour of Turkey where he sought a legitimate work permit and sought to settle, inviting the Appellant to join him for marriage. When it proved impossible to gain a legitimate work

permit, after three months, he left Turkey for the UK. None of that evidence was challenged. In the light of the analysis of the authorities undertaken by Lord Slynn in Nessa [1999] UKHL 41, it would have been open to the Judge to find that after leaving Syria the sponsor had been habitually resident first in Libya, then in Turkey, and latterly in the UK – and that he had merely lived in for the purpose of transiting them, the other countries he had referred to.

8. It follows that in my judgement the grounds are misconceived. They disclose no material error of law. There was no error in the Judge's conclusion that "family life" existed between the couple, and that since the Appellant met the requirements of the Immigration Rules there was no public interest in maintaining the refusal of entry clearance. In my judgement the Judge did properly consider the competing interests and balanced them, giving adequate reasons for her conclusions. I therefore dismiss the challenge, and confirm the decision to allow the appeal on Article 8 grounds.
9. An anonymity direction is made.

#### Notice of decision

The decision promulgated on 20 February 2018 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to allow the Article 8 appeal is accordingly confirmed.

#### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any of the individuals referred to in this decision. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
Deputy Upper Tribunal Judge J M Holmes

Date 8 May 2018