



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002728  
First-tier Tribunal Nos: HU/55618/2021  
IA/13983/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 21 May 2023**

**Before**

**THE HON. MR JUSTICE DOVE, PRESIDENT**  
**(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)**

**Between**

**A R**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wood  
For the Respondent: Mr Tan, Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 24 March 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The appellant in this case appeals with leave of the First-tier Tribunal, a decision which was reached by the First-tier Tribunal on 10 May 2022. The appellant is a national of Tunisia who was born on 19 February 1986. He came to the UK on 11 July 2017 with a business visit visa which was valid until 12 December 2017. He applied on 29 September 2020 for leave to remain on the basis of his family life in the United Kingdom, relying on a relationship with the sponsor and also with the sponsor's grandchildren for whom she had responsibility.
2. His application was considered by the respondent under the ten year partner route. It was dismissed on the basis of the provision of false information and a failure to satisfy the requirements of the Immigration Rules and Article 8. In effect the appellant was identified as being unsuitable under the Rules to qualify for that form of leave. Subsequently he appealed, leading to the decision on 10 May 2022. In the determination, which the First-tier Tribunal Judge prepared, he set out in detail the requirements of the Immigration Rules. It is unnecessary for the purposes of my decision to re-rehearse all of that material because the context which it gave rise to for his decision making was that in effect the question which was dispositive of the Article 8 issues in relation to his relationship with the sponsor was whether or not there was a genuine and subsisting relationship with the sponsor and they were living together effectively as a married couple.
3. In the material which the respondent had relied upon to refuse the application was the assertion, said to have been made by the appellant during the course of an enforcement visit on 24 July 2018, the appellant had said "the Islamic marriage certificate [which was relied upon in the application] had been created by a friend to satisfy Social Services that you were in a genuine relationship with your sponsor". No evidence was produced before the First-tier Tribunal Judge as to that enforcement visit and no witness statements or other record of it was provided apart from what had been contained in the decision. Weighing up the evidence therefore, and taking account of the fact that it was denied by the appellant that any such thing had been said, the First-tier Tribunal Judge made an unassailable factual finding that on the balance of probabilities the respondent had not demonstrated that the Islamic marriage certificate was a false document [see paragraph 40].
4. A further assertion said to have been made by the appellant at the enforcement visit was also relied upon. That assertion was recorded in the following terms "On 11 July 2017, you entered the UK on a Business Visit Visa, during the enforcement visit you were questioned further about this visa and you confirmed that you had not given the correct reason for your true intentions for coming to the UK." Once more, the First-tier Tribunal Judge, examining the evidence, and the complete absence of evidence from the respondent as to the context of the enforcement visit, either in the form of witness statements or other records, concluded that the respondent had failed to establish on the balance of probabilities that false documents or false representations had been made. This led the First-tier Tribunal Judge to conclude at paragraph 47 that the suitability requirements of Appendix FM had been met. That finding led the First-tier Tribunal Judge to what I have already identified as the dispositive issue in this case, namely whether or not there was a genuine and subsisting relationship between the appellant and the sponsor.

5. At paragraph 49 of the decision, the judge explained that he had no doubt that the appellant had lived in the same house as the sponsor for well in excess of two years. He then went on to examine the oral evidence that both the appellant and the sponsor had given in relation to the events surrounding their meeting and then the arrangements in relation to them living together. It is unnecessary for the purposes of this decision to quote in total the First-tier Tribunal Judge's findings. In essence the First-tier Tribunal Judge found that there was evidence which was strange and implausible in respect of Facebook accounts and entries addressing how the sponsor and the appellant met and how they came to be together. Further, the First-tier Tribunal Judge noted that in the relatively extensive documentation, which had been produced, there were no photographs of the appellant and sponsor taken together at the same time, albeit there were photographs of the appellant and the sponsor's grandchildren.
6. The First-tier Tribunal Judge went on to note a significant number of inconsistencies between the evidence of the appellant and the sponsor in relation to the circumstances of the Islamic marriage which the appellant and the sponsor said they had been through. There were inconsistencies that the judge noted in respect of the dates of the ceremony, the form of the ceremony, who or how many people were in attendance at the ceremony, and he noted further discrepancies in relation to the sponsor's religious beliefs and also the absence of any photographs of the occasion of their marriage.
7. When the enforcement visit occurred, it was agreed that the appellant was found to be sleeping on the sofa in the sponsor's house. The explanation for this was that it was said that the appellant had an injury to his foot. In the context of all of the evidence, at paragraph 67 of the First-tier Tribunal Judge's decision he concluded that the suggestion that the appellant had a broken foot was not a reasonable explanation for why the appellant was sleeping on the sofa rather than with the sponsor.
8. Taking all of these matters together, at paragraph 68 of the decision, the First-tier Tribunal Judge concluded that the appellant and the sponsor were not living together in a relationship akin to marriage and did not have a genuine and subsisting relationship as partners. As such therefore, there was no need for him to consider the question of insurmountable obstacles under the Rules.
9. The First-tier Tribunal Judge then went on to record this in paragraph 70 of the decision, which is the subject of criticism in the proceedings today.

"70. On the totality of the evidence, I find that what the Appellant is alleged to have told the immigration officers at the enforcement visit about the relationship is more likely than not true. It is said that the Appellant stated to the immigration officers that 'you weren't in a loving relationship with your sponsor, but you were helping with the four children that are in the sponsor's care.'"
10. The grounds of the appeal focus upon the findings which I have set out above. The first ground advanced by Mr Wood in his commendably clear and succinct submissions is that there is a clear inconsistency and inappropriateness in the judge earlier on in the decision not accepting what had been said to have happened at the enforcement visit, and then later in paragraph 70 effectively adopting it in respect of his conclusions as to the relationship between the appellant and the sponsor. Ground 3, the second ground upon which permission

has been granted, is the submission that having concluded that the marriage certificate was not false there was a necessary and interrelated finding that was required as to whether or not that certificate was reliable. That finding was integrally linked with the conclusions which the judge reached in relation to whether or not the marriage was one which was subsisting.

11. Having considered the submissions in relation to both grounds, I am not satisfied that either of them amount to an error of law in this decision or that they are matters which have infected the findings of fact which the First-tier Tribunal Judge has made in this case with illegality.
12. Dealing with the first ground related to paragraph 70, when read in context and reading the decision as a whole, it is clear that the observation in paragraph 70 is one which is a summation of the conclusion he has reached at paragraph 68 and all of the other matters about which there have been individual findings bearing upon whether or not there is a genuine and subsisting relationship. All that the judge was doing in paragraph 70 was relating that to an extract of what was recorded in the enforcement visit. It was not him relying upon the enforcement visit's record, and the clear and coherent reasons for the judge concluding that there was not a genuine and subsisting relationship akin to marriage between the appellant and the sponsor had been fully and adequately explained in the reasons that had been set out in the preceding paragraphs. I am unable to accept the submission therefore that the inclusion of it from the enforcement visit record is something which infects and interferes with all of the earlier clear findings that the judge had made.
13. So far as the marriage certificate is concerned and ground 3, there are two separate issues in relation to this. It is not the case that the judge could not have made a finding in relation to the reliability of that document, but in the circumstances his decision was already pellucidly clear as to the findings in relation to the relationship between the sponsor and the appellant. There was no requirement for him to make any reliability finding in the particular context of this case where, as I have set out above, there were lengthy and detailed findings based on a range of evidence which led him to conclude that the relationship was not capable of satisfying the Rules. Thus I am unable to accept that the failure to make a finding about the reliability of the marriage certificate is a missing issue of fact which ought to have been addressed in order for this decision to be sound and free from errors of law.
14. It follows from what I have indicated that in my judgment there is no error of law in this case. I am very grateful to the parties for their clear and succinct submissions but in the circumstances this appeal must be dismissed.

**Ian Dove**

President of the Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: UI- 2022-002728  
First-tier Tribunal Numbers: HU/55618/2021  
IA/13983/2021

**16<sup>th</sup> May 2023**