

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: HU/09096/2016**

**THE IMMIGRATION ACTS**

|  |  |
| --- | --- |
| **Heard at Manchester Civil Justice Centre** | **Decision & Reasons Promulgated** |
| **On 29th May 2018** | **On 12th June 2018** |
|  |  |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**KF**

(anonymity direction MADE)

Appellant

**and**

**ENTRY CLEARANCE OFFICER - AMMAN**

Respondent

**Representation:**

For the Appellant: Ms S Khan of Counsel, instructed by Adam Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant’s name is also spelt differently and the non-anonymised version of any correspondence shall refer to that to avoid any delays with entry clearance being granted.

2. The Appellant had sought leave to enter the United Kingdom to join her Sponsor here in the United Kingdom, who had been recognised as a refugee. His name is Mr TF. The matter had come for hearing before First-tier Tribunal Judge Smith, who in a very detailed decision dismissed the Appellant’s claim.

The Appellant’s Appeal

3. By way of a decision dated 17th January 2018 Upper Tribunal Judge Rintoul granted permission to appeal against that decision. The judge noted as follows when granting permission:

“It is evident from the substantive interview that the Sponsor had given the Appellant’s name as his spouse. It is unclear whether the judge took that into account, or whether it was assumed that the Sponsor had not addressed the issue until after the refusal in this appeal. Given the other positive findings it is arguable that the judge’s decision involved the making of an error of law.”

4. Upper Tribunal Judge Rintoul also made various directions including that the Respondent was to confirm whether or not prior to the substantive interview submissions were made explaining that a wrong name for the wife had been given and to produce a copy and the Appellant was directed to provide a copy of her representations that were said to have been made and referred to at paragraph 4 of the grounds of appeal.

5. Before me today Ms Khan has produced a letter dated 18th May from Lei Dat & Baig Solicitors of Liverpool addressed to the Appellant’s currently solicitors, Messrs Adam Solicitors based in Salford. In that letter it says as follows:

“We refer to your letter dated 3rd May 2018 and confirm that we have now retrieved the file from storage. We have reviewed the file and can confirm that we have a draft witness statement on file in which the client confirmed his wife’s details. Please find herewith a copy of the same. Please note that this statement was only in draft, it was never signed or submitted to the Home Office. Furthermore having gone through the file in detail we have found a handwritten note which records his wife’s name is [KF].”

and then in the draft witness statement of the Sponsor it says in part as follows:

“I am a national of Syria, I was born on [1st January] in [DH]. I am married, my wife is called KF, her date of birth is [1st May]. I have provided the Home Office with my original Syrian passport and identity card when I came to the UK.”

6. Mr McVeety very helpfully in his submissions explained that he had available to him the Presenting Officer’s Record of Proceedings and it is clear, he says, that the issue of whether or not the Appellant was asked about his wife’s name and this issue in effect was indeed put by the Presenting Officer during the hearing and thereby supporting what the Sponsor and indeed the grounds of appeal contend.

7. Turning then to the judge’s decision, which I have already indicated in my judgment does indeed set out in a very helpful and chronological way what the issues were and indeed the background to the case. As Mr McVeety says in his submissions though, and indeed as he explained that although he is not able to make a concession in relation to the case he acknowledges that there were numerous findings in favour of the Sponsor and thereby in favour of the Appellant and that the only issue was the screening interview, the screening interview which the Sponsor had undertaken on the day of his arrival here in the United Kingdom and when he had sought asylum. During that interview the Sponsor had said he had provided an incorrect name for his wife because he feared that the authorities in Syria or the regime in Syria may come to know of his wife’s details and because she remained behind in Syria he was worried for her and gave those incorrect details, and that indeed was reflected upon by the judge himself when he said at paragraph 19 that even he was reluctant to give too much weight to a false statement given on the day of arrival in the United Kingdom by the Sponsor, and who was subsequently accepted to be a genuine asylum seeker.

8. In my judgment there was a procedural error. That is because the Judge mistakenly thought the matter about the wife’s name and screening interview had not been put during the hearing. It had. It is of such an importance to the findings which were ultimately made that the decision of the First-tier Tribunal Judge shows a material error of law. It thereby means that the decision of the First-tier Tribunal Judge has to be set aside.

9. Now, as to what should occur next Mr McVeety very fairly says in view of the evidence which is available and in view of all of the other favourable findings which have been made it is quite possible in those circumstances for me to substitute a decision today.

10. Having considered the rival submissions and indeed looking to the bundle which was provided to the First-tier Tribunal I note the following significant evidence about the marriage. Firstly, there is a marriage certificate. It is impossible to see anything of concern about that document. There is then the document which appears at page 24 which is a medical report showing the correct name for the Appellant and that there was a reported miscarriage. It clearly shows the couple having tried to have a baby. There is a police report at page 26 showing a report of the Sponsor’s home having been burnt to the ground, in view of the state of affairs in relation to the war which is ongoing in Syria and that explains why the photographs left in that home were unavailable for the hearing.

11. There is then a witness statement at page 29 and indeed a further witness statement at page 31. Although both statements are short they deal with the point that those witnesses knew the Appellant and indeed the Sponsor and that they witnessed the marriage between the couple. That marriage took place in Al Haraa in Syria in March 2014, and those witnesses, as I understand it, both attended the hearing before the First-tier Tribunal Judge. There are then some text messages which were exchanged between the Appellant and the Sponsor showing their continued devotion to each other and in view of the general background picture of what is happening in Syria and in this particular area from which the Appellant and the Sponsor hail, in my judgment, there is a perfectly proper explanation as to why it is difficult to get hold of digital photographs from the official marriage photographer and indeed to obtain any more than the substantial documents which have already been presented. In my judgment, it is perfectly clear that the Sponsor would indeed have feared what the authorities may do to his wife if he was to give the correct name for her.

12. In the circumstances I conclude that there is sufficient evidence to enable me to conclude that the decision of the Entry Clearance Officer is not one which can be upheld and that therefore in the circumstances, in my judgment, the Appellant does meet the requirements of Rule 352A of the Immigration Rules and that, as a consequence, because she meets the family reunion aspects her appeal thereby succeeds.

The decision of the First-tier Tribunal contained a material error of law. I remake the decision, allowing the application of the Appellant seeking entry clearance.

In view of the claim for asylum which is linked to this appeal it is appropriate for there to be anonymity in respect of the names which have been provided.

**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 member of her family. 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: Abid Mahmood Date: 29 May 2018

Deputy Upper Tribunal Judge Mahmood

**TO THE RESPONDENT**

**FEE AWARD**

I am going to refuse the application for a fee in respect of this case, principally because, in my judgment, the way in which the case was prepared and presented could have made all the difference, and it was the way in which the case was presented and prepared which has led to the numerous appeals, and I suspect the Appellant in fact, and indeed the Sponsor, will be elated that the appeal has now been allowed, and that is really the focus of what their future thinking will be.

Signed: Abid Mahmood Date: 29 May 2018

Deputy Upper Tribunal Judge Mahmood