



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16708/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 8 July 2013

Determination Promulgated
On 20 September 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ROGHAYEH IMANI GOURJAGH

Appellant

and

ENTRY CLEARANCE OFFICER - ISTANBUL

Respondent

Representation:

For the Appellant: Mr M Ghani, Ismail & Ghani Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Roghayeh Imani Gourjagh, was born on 27 September 1966 and is a female citizen of Iran. On 15 August 2012, the Entry Clearance Officer Istanbul refused the appellant's application for settlement in the United Kingdom as the

spouse of a refugee, Eznollah Kamili (hereafter referred to as the sponsor). The First-tier Tribunal, in a determination promulgated on 18 April 2013, dismissed her appeal against that decision. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Keane, wrote:

“The grounds of appeal disclose an error of law. In arriving at his findings, the judge accorded weight to Mr Kamali’s conduct in embarking upon a period of two years’ absconding after he claimed asylum on arrival in the United Kingdom. Such conduct led the judge to find that Mr Kamali’s claim that he wished to be reunited with his family in the United Kingdom to lack credibility. However, the judge had approbated the Entry Clearance Manager’s acceptance that the appellant and Mr Kamali were married to each other, that the appellant is the mother of Mr Kamali’s three children and the judge referred, and critically, to documents which included a marriage certificate and proof that the children were indeed the appellant’s and Mr Kamali’s children (paragraphs 21 and 22 of the determination). There were in addition a number of photographs which show the appellant and Mr Kamali and there were photographs of their children. The judge arguably did not accord sufficient weight to the above-mentioned evidence which may establish that the appellant and Mr Kamali intend to live permanently with each other and that their marriage is a subsisting marriage but for such an error the appeal might have been decided differently.”

3. I find that the First-tier Tribunal Judge reached findings which were open to him on the evidence. He did not fail to take account of evidence which was relevant nor did he take account of evidence which was irrelevant. The issue in the appeal was not (as the grounds of appeal and the grounds of permission appear to suggest) in part whether the appellant and sponsor had contracted a legal marriage or whether the children referred to were the natural biological children of the appellant and sponsor. That much of the appellant’s case the First-tier Tribunal Judge [at 22] appeared to have accepted, noting that, “the Entry Clearance Manager does not dispute that the couple were married nor that they have three children.” The judge refers at [23] to the sponsor’s appeal to an Immigration Judge of the refusal of his asylum claim and to the lack of credibility in the sponsor’s evidence identified by the Immigration Judge. I find that it was open to the judge in the instant appeal to take those findings into account in assessing whether or not the appellant had proved that she was in a subsisting relationship with the sponsor. The judge noted at [23] that,

“... I find that [Mr Kamali’s] claim he wanted to bring his family here lacks credibility. If the appellant genuinely wished to claim asylum to have his family join him, I do not find it credible that, after claiming asylum, he would abscond for two years. I find the behaviour of the appellant seriously undermines his credibility.”

At [30], the judge found that,

“[The sponsor’s] subsequent period of absconding in the United Kingdom [together with his actions in leaving the appellant and children in 2008 to make the journey to the United Kingdom] are not consistent with an ongoing subsisting relationship. There is no cogent evidence of any contact between the couple during those years.”

Those are clearly findings available to the judge.

4. The grounds complain that the judge failed to give proper weight to photographs allegedly showing meetings between the appellant and sponsor and the children. However, the judge found at [30], that “the photographs merely show meetings have taken place between the couple.” That again was a finding open to the judge; indeed, it is difficult to see how the judge should have found that the photographs did more than indicate that the sponsor and appellant had met; it is virtually impossible for still photographs to convey the depth or strength of any relationships which may exist between individuals appearing in them. In the light of the view taken of the other evidence by the judge, it is hardly surprising that the judge did not find that the photographs were sufficient to discharge the burden of proof on the appellant that a relationship with the sponsor was subsisting.
5. I find that the grounds amount to little more than dispute with findings which were available to the judge on the evidence before him. The grounds fail to identify an error of law such that the determination of the First-tier Tribunal should be set aside. Accordingly, the appeal is dismissed.

Decision

6. This appeal is dismissed.

Signed

Date 31 July 2013

Upper Tribunal Judge Clive Lane