



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06075/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 11 April 2019

**Decision & Reasons
Promulgated
On 16 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

I J

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: The Sponsor in person

For the Respondent: Mr S Kotas of the Specialist Appeals Team

ERROR OF LAW DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Gambia born on 24 December 1981. On 5 April 2012 in Gambia she contracted a marriage by proxy with D C who was and remains in the United Kingdom. On 29 August 2012 the marriage was registered with the Gambian state authorities. The Appellant is sponsored by her husband.
2. The husband is a refugee from Gambia who on 21 May 2012 was granted indefinite leave to remain. Subsequent to the proxy marriage the husband had travelled to Senegal in July 2016 to meet the Appellant.

3. On 18 December 2016 the Appellant applied for entry clearance to join her husband in the United Kingdom as the wife of a refugee.

The ECO's decision

4. On 27 March 2017 the Respondent (the ECO) refused the Appellant entry clearance under reference SHEFO/365518. The ECO noted the marriage had been contracted some two years after the husband had left Gambia and that only minimal evidence of contact between the Appellant and the husband had been produced. No explanation had been given for the substantial delay between the marriage and the Appellant's reunion application. The ECO doubted the marriage was genuine or the relationship subsisting. For these reasons the Appellant had not shown she met the relevant requirements of the Immigration Rules and also had not shown that the State's obligations to respect the private and family life of the Appellant and the husband protected by Article 8 of the European Convention were engaged. Subsequent to the Appellant lodging notice of appeal on 5 May 2017, the Entry Clearance Manager reviewed the decision and noted the Appellant had produced a TB certificate.
5. More importantly, the ECO referred to paragraph 352A(ii) of the Immigration Rules setting out the requirements for refugee family reunion. It extended to marriages contracted prior to the flight of the refugee or to partners in a relationship akin to marriage which had subsisted for two years before the flight of the refugee. The husband had left Gambia in 2010 and not married the Appellant until 2012.

Proceedings in the First-tier Tribunal

6. On 09 May 2018 the Appellant lodged notice of appeal. The grounds noted that the religion and culture of the Appellant and the husband prohibited living together prior to marriage. Photographic evidence had been submitted to the ECO and returned. The couple remain in constant contact by mobile telephone. The Appellant's application had been delayed because the husband had been diagnosed with sight problems and as HIV+.
7. The husband attended the hearing before Judge of the First-tier Tribunal Gribble at which the ECO was not represented. At paragraphs 26 and 31 of her decision she accepted the husband had by proxy married the Appellant in Gambia in 2012. She went on to dismiss the appeal because the marriage had taken place after the husband fled Gambia and there was no evidence that the Appellant and the husband had been in a relationship akin to marriage for at least two years before he had left Gambia. She considered whether there were any exceptional or compelling circumstances such that entry clearance should be granted to the Appellant outside the Immigration Rules and after assessing the proportionality of the refusal to grant entry clearance concluded the refusal was proportionate and dismissed the appeal on all grounds.
8. On 14 September 2018 Judge of the First-tier Tribunal Beach granted permission to appeal out of time and because it was arguable the Judge

had erred in making no finding whether the marriage was a valid proxy by marriage.

The Upper Tribunal Proceedings

9. The husband attended the hearing. In the course of the “housekeeping” exercise at the start of the hearing day I enquired of the husband if there were any documents not previously submitted which he wished me to consider. I repeated the enquiry at the start of the actual hearing. On both occasions the husband confirmed there was no further documentary evidence. He confirmed his present address. I explained to him the purpose of the hearing and the nature of a material error of law. As will appear, I did not need to hear from Mr Kotas for the ECO.
10. I explained the requirements of the Immigration Rules for refugee family reunion imposed conditions in the case of a marriage that the marriage needed to have been contracted before the refugee fled his home country and in the case of a relationship akin to marriage that it had subsisted for two years before the refugee’s flight.
11. I explained that the Appellant’s application had been made on the basis of refugee family reunion. There are other provisions in the Immigration Rules for spouse reunion and these imposed different requirements and in particular in relation to the sponsoring’s spouse’s income. There was no evidence in the Tribunal file addressing these different requirements.
12. Further in this appeal, the Upper Tribunal did not have jurisdiction to review the appeal by reference to a different category of the Immigration Rules, namely spouse reunion by reference to paragraph 281. I had in mind the recent decision of the Upper Tribunal in *AK and IK (s.85 NIAA 2002-new matters) Turkey [2019] UKUT 00067 (IAC)*.
13. I told the husband that the application for entry clearance on the basis of refugee family reunion was doomed from the start for the reasons mentioned in paragraph 10 of this decision. I noted the earliest documentary evidence of his relationship with the Appellant dated from 18 July 2011, being the date that the Appellant’s wife became a co-signatory on his bank account.
14. I suggested to the husband he might seek legal advice about a further application under the appropriate Immigration Rules and that if his funds were limited, he might be able to obtain advice from a Citizens’ Advice Bureau or from a local Law Centre.

SUMMARY OF DECISION

The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appeal of the Appellant is dismissed.

Signed/Official Crest

Date 15. iv. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal