Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-001140
HU/06359/2020

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 4th October 2022	**On 18th November 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

AB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Bircumshaw, Central England Law Centre
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal ("FtT"). As this a family reunion claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, AB is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction

applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Syria. On 14th January 2020 he applied for entry clearance as the partner of someone in the UK with refugee leave (family reunion). The appellant claimed to have married his sponsor, who we shall refer to as [ABI], on 8th February 2019. The application was refused by the respondent for reasons set out in a decision dated 27th March 2020.

2. The respondent noted the appellant claimed to be the married partner of [ABI] and that in support of the application the appellant had submitted a marriage certificate confirming the marriage took place on 8th February 2019. However, the respondent also noted that in her application for resettlement, [ABI] did not name the appellant as her spouse and had only referred to the person she was previously married to. Additionally, the respondent noted [ABI] had signed a document on 25th November 2019 in which she confirmed she was unmarried, and not in a relationship that would lead to another person applying to join her in the UK. The respondent therefore attached minimal weight to the marriage certificate relied upon, and upon the basis of the information available to respondent, concluded the appellant had not submitted sufficient evidence to demonstrate that he and [ABI] had resided together in a relationship akin to marriage for at least 2 years or more in the appellant's country of habitual residence. The respondent concluded the appellant fails to meet the requirements of paragraphs 352A (i), (ii), (iii) and (v) of the immigration rules.

3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Row for reasons set out in a decision promulgated on 14th February 2022. [ABI] attended the hearing of the appeal and gave evidence. The Judge's consideration of the evidence and his findings are set out at paragraphs [12] to [31] of the decision. At paragraphs [27] to [29] of the decision, Judge Row said:

> "27. There are two possible scenarios. The first is that what the sponsor now says is the truth. She lied in her application to come to the United Kingdom and that she and the appellant were married in either March 2018 or February 2019. If that is the case then there is a pre-flight marriage and the appellant meets the requirements of the Immigration Rules, albeit assisted by the fraud of his wife.
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> 28. A second scenario is that the sponsor was telling the truth when she made her declaration on 25 November 2019 that she was unmarried. She returned to Turkey in September 2020. She got married to the appellant after her arrival. She spent the rest of her time there visiting friends and family whilst living with the appellant. She then returned to the United Kingdom pregnant. The estimated delivery date was 5 August 2021. The facts will bear this interpretation.
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> 29. There are two key pieces of evidence. The first is the marriage certificate of 8 February 2019. If there is a dispute about the authenticity of a marriage certificate the obvious course of action would be for the appellant's solicitors to write to the registrar in Turkey to ask the registrar to confirm that the details of the registration were correct. The registrar would either have said that they were or that they were not. Either way it would have confirmed the matter. The course of action is obvious and straightforward."

4. Permission to appeal was granted by First-tier Judge Handler on 21st April 2022. Judge Handler noted the appellant had submitted his application on 14th January 2020 and as part of that application, provided the marriage certificate and wedding photographs that were referred to in the respondent's decision. Therefore, a conclusion that the appellant and sponsor may have married when the sponsor visited the appellant in Turkey from September 2020 to February 2021 was not open to the Judge.

5. The respondent has filed a rule 24 response dated 20th May 2022 and concedes Judge Row erred in his assessment of the marriage certificate relied upon by the appellant. At the hearing before us, Mr Williams candidly accepts the decision of Judge Row is infected by a material error of law and must be set aside.

6. We must then consider whether to remit the case to the F*t*T, or to re-make the decision in the Upper Tribunal. Both parties agree that the decision can be remade by us.

7. On behalf of the respondent, Mr Williams accepts the appellant has provided further evidence regarding the date of the marriage, including

a copy of the Marriage Registration Form obtained by the appellant and [ABI] from Istanbul. Mr Williams confirms the authenticity of the documents is not in issue and he accepts the appellant has now provided sufficient evidence to establish that he was married to [ABI] on 8th February 2019 as he claims. Mr Williams confirms the sponsor has provided an explanation as to why she had said in November 2019 that she was not married. He does not challenge that explanation and accepts the family reunion requirements for leave to enter as the partner of a refugee as set out in paragraph 352A of the immigration rules are met.

8. This is an appeal brought under Article 8 of the European Convention on Human Rights ("ECHR"). The burden of proof is upon the appellant to show, on the balance of probabilities, that he has established a family life and that his exclusion from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

9. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved. It is now common ground that the appellant satisfies the requirements of paragraph 352A of the immigration rules. That is particularly relevant since the respondent's policy on immigration control is expressed through the rules and it is entitled to be afforded *'considerable weight;'* TZ (Pakistan) [2018] EWCA Civ 1109 *at [34].* There is in our judgment nothing that weighs in favor of a refusal of leave to enter and in the circumstances, we are satisfied that the interference is disproportionate to the legitimate public end sought to be achieved.

10. It follows that we remake the decision and allow the appeal on Article 8 grounds.

NOTICE OF DECISION

11. The decision of First-tier Tribunal Judge Row is set aside.

12. The decision is remade by us, and we allow the appeal on Article 8 ECHR grounds.

Signed **V. L. Mandalia** Date 4th October 2022

Upper Tribunal Judge Mandalia