



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

Case Nos: UI-2023-005219

First-tier Tribunal No: HU/51408/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

15<sup>th</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**  
**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**Najibulla Safi**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Osmani, of Times PBS Ltd

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 10 January 2024**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him entry to the UK under the family reunion rules.

2. The appellant is a national of Afghanistan born on 18 November 1995. On 16 December 2021 he applied for entry clearance to the UK under the family reunion provisions in the immigration rules, in paragraph 352A, as the partner of his sponsor, a

naturalised British citizen living in the UK, whom it was claimed he had married in Istanbul, Turkey, on 19 October 2019.

3. The appellant's application was refused in a decision dated 19 January 2023 on the grounds that he could not meet the requirements of the immigration rules since his sponsor, having been naturalised as a British citizen since November 2007, was ineligible to sponsor his application, pursuant to paragraph 352FJ of Part 11 of the immigration rules. The respondent was in any event unable to accept the marriage certificate produced with the application as evidence of a pre-flight relationship as the date the document was issued was unclear. The respondent also noted that there was no evidence of contact between the appellant and his sponsor despite his sponsor having been in the UK for nearly 20 years. The respondent accordingly concluded that the appellant could not meet the requirements of the immigration rules and, further, that there were no exceptional or compelling circumstances outside the rules.

4. The appellant appealed against the respondent's decision and his appeal was heard by First-tier Tribunal Judge Chana on 5 October 2023. It was accepted before the judge that the appellant could not meet the requirements of paragraph 352A of the immigration rules. The judge went on to consider whether there were any exceptional circumstances for the purposes of GEN.3.2 and whether the decision was otherwise disproportionate under Article 8. She concluded that the appellant and sponsor were not in a genuine and subsisting relationship and therefore considered that there was no family life established for the purposes of Article 8. The judge made her adverse findings about the relationship on various grounds which included in particular a finding that the marriage certificate produced by the appellant was not a reliable document and that there was inconsistent evidence of the date the couple first met.

5. The appellant sought permission to appeal to the Upper Tribunal on two main grounds, the second of which asserted that the judge had made various errors in her adverse credibility findings and that the appellant had, as a result, been deprived of a fair hearing. Those errors included, *inter alia*, erroneous findings on the marriage certificate, the reliability of which had not, in fact, been challenged by the respondent, and an erroneous finding in relation to a document from Belgrade Medical Centre relating to the date the couple had first met, which the judge had misunderstood.

6. Permission was granted in the First-tier Tribunal on that second ground and the matter then came before us for a hearing.

7. Mr Clarke conceded the errors in Judge Chana's decision which he accepted were material to her overall credibility findings and accepted that there was procedural unfairness arising from the judge's approach to the marriage certificate. He accepted that the respondent's only issue with the marriage certificate had been in relation to the question of whether the marriage was a pre-flight one for the purposes of paragraph 352A of the immigration rules and that no issue had otherwise been taken with the reliability of the document.

8. In light of Mr Clarke's concession, it is accepted that the judge's decision cannot stand and has to be set aside in its entirety. The appeal has to be re-determined *de novo*. Mr Osmani requested that the decision be re-made at the earliest opportunity, whether that would be in the Upper Tribunal or by way of remittal to the First-tier Tribunal. However, since the judge's decision is set aside on grounds of procedural unfairness, the appropriate course in such circumstances is for the case to be remitted to the First-tier Tribunal for a fresh hearing.

**Notice of Decision**

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Chana.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

10 January

2024