



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/19362/2013

THE IMMIGRATION ACTS

Heard at: Field House

Decision and reasons

Promulgated

On: 22 June 2018

On: 9 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MRS FATIMA BOUSBAA
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr AL-Rashid of Counsel

For the respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellant born on March 1989, a citizen of Morocco appealed against the decision of the Secretary of State dated 10 September 2013 for entry clearance to enter the United Kingdom as the spouse of Mr Hazzem in accordance with the immigration rules. She also appeals against the decision of the Secretary of State dated 20 January 2016 refusing her

application for an EEA residence card as proof of her right to reside with Mr Hazzem in the United Kingdom.

2. The appellant's permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge PJM Hollingworth who stated that it is arguable that the Judge has fallen into error by concluding that the appellant has been dishonest as stated at the conclusion of paragraph 46 of the decision. It is further arguable that the construction placed by the Judge on the validity or otherwise of the divorce referred to in the decision is an error in relation to the marriage of the sponsor and his second wife. It is arguable that the Judge should have considered in greater detail the circumstances in which the entry clearance officer had refused the second wife's application for settlement claiming she was not validly married to the sponsor. It is further arguable that the Judge has conflated legal and customary law marriage.
3. The first-tier Tribunal Judge dismissed the appellant's appeal on the basis that her sponsor has been married twice. His first marriage was on 18 June 2001 and they were divorced on 25 August 2015. On 11 July 2006 the appellant sponsor married another woman who was an Iraqi national. An application was made for her entry clearance to join the sponsor which was refused on 29 July 2007 and her appeal against the decision was dismissed on 22 May 2008. The Judge was not satisfied that the appellant sponsor was free to marry the appellant as he had not demonstrated that he was divorced from his second wife.
4. The Judge stated that there is no evidence before him that polygamy is allowed in Morocco although he accepted that it is valid under Islamic law. Therefore, the appellant's marriage to her sponsor, even if polygamous, was accepted as a valid Islamic marriage if not valid under the law of the land. The Judge found that the appellant sponsor had not demonstrated that his marriage to his second wife had been lawfully terminated and that he was free to marry the appellant. The Judge nevertheless found that the appellant does not meet the relationship requirements of the immigration rules.
5. However, the evidence before the Judge was that the appellant and the sponsor provided a marriage certificate. This marriage was recognised by the family Judge of the Tribunal of first instance in Morocco and the appellant was issued with a "certificate of non-implementation to marriage" by the British Consulate to the sponsor on 22 June 2010. The Judge fell into error by trying to go behind the certificate to find that the appellant sponsor is not divorced from his first wife and therefore the appellant's marriage to her sponsor is not valid.
6. The respondent's view is that the appellant does not meet the eligibility requirement because she failed to disclose that her sponsor was

previously married. The appellant however did write on her application form that her sponsor had made an application for entry clearance for another woman as his wife and the marriage was held not to be valid by the respondent. The Judge therefore erred in saying that the appellant was dishonest and not revealing her sponsor's previous marriage, because clearly, she had done so.

7. Mr Walker on behalf of the respondent accepted that the Judge had made a material error of law about the marriage. He further accepted that the fact that the British Council authorised the sponsor and the appellant's marriage, they must have been satisfied that the appellant and the sponsor were free to marry each other.
8. I therefore find that the appellant has met the requirements of the immigration rules for entry clearance as a spouse of a British citizen. I accept that the appellant and her sponsor are in a durable relationship. No issue has been taken by Mr Walker that the appellant does not meet the requirements for maintenance.
9. I find that this is a material error of law in the decision of the First-tier Tribunal and I set it aside. I remake the decision and allow the appellant's appeal under the Immigration Rules.

DECISION

The appellant's appeal is allowed under the immigration rules.

Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal

This 24th day of June 2018